2-10-2016

Estate of Stahl v. Idaho State Tax Com'n Clerk's Record Dckt. 43832

IN THE SUPREME COURT OF THE STATE OF IDAHO

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff-Appellant, vs. IDAHO STATE TAX COMMISSION, Defendant-Respondent.	Supreme Court Case No. 43832

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE JASON D. SCOTT

NICHOLAS S. MARSHALL	DAVID B. YOUNG
ATTORNEY FOR APPELLANT	ATTORNEY FOR RESPONDENT
BOISE, IDAHO	BOISE, IDAHO

Estate Of Zippora Stahl, Kathleen Krucker vs. Idaho State Tax Commission

Date	Code	User		Judge
1/6/2015	NCOC	CCMARTJD	New Case Filed - Other Claims	Jason D. Scott
	COMP	CCMARTJD	Complaint Filed	Jason D. Scott
	SMFI	CCMARTJD	Summons Filed	Jason D. Scott
	AMEN	CCMARTJD	Amended Summons Filed	Jason D. Scott
1/12/2015	AFOS	TCHOLLJM	Affidavit Of Service (1/7/15)	Jason D. Scott
1/27/2015	ANSW	CCHOLDKJ	Answer (Young for Idaho State Tax Commission)	Jason D. Scott
2/3/2015	HRSC	CCSTOKSN	Hearing Scheduled (Status / Scheduling / Settlement Conf 02/25/2015 03:15 PM)	Jason D. Scott
2/19/2015	STIP	CCSTOKSN	Stipulation for Scheduling and Planning	Jason D. Scott
	HRVC	CCSTOKSN	Hearing result for Status / Scheduling / Settlement Conf scheduled on 02/25/2015 03:15 PM: Hearing Vacated	Jason D. Scott
	HRSC	CCSTOKSN	Hearing Scheduled (Pretrial Conference 11/04/2015 03:00 PM)	Jason D. Scott
	HRSC	CCSTOKSN	Hearing Scheduled (Court Trial 12/07/2015 09:00 AM) 2	Jason D. Scott
2/20/2015	STIP	CCZUBEDK	Stipulation for Scheduling and Planning	Jason D. Scott
2/23/2015	SCHE	DCDANSEL	Scheduling Order	Jason D. Scott
6/26/2015	MEMO	CCVIDASL	Plaintiffs Memorandum in Support of Motion for Partial Summary Judgment	Jason D. Scott
	AFFD	CCVIDASL	Affidavit of Ralph V Seep	Jason D. Scott
	MOTN	CCSNELNJ	Motion for Summary Judgment	Jason D. Scott
	STIP	CCSNELNJ	Joint Stipulation Finding's of Facts	Jason D. Scott
	STIP	CCSNELNJ	Joint Stipulated Briefing Schedule	Jason D. Scott
	MEMO	CCSNELNJ	Memorandum in Support of Tax Commision's Motion for Summary Judgment	Jason D. Scott
	MOTN	CCBOYIDR	Motion for Partial Summary Judgment	Jason D. Scott
	HRSC	CCSTOKSN	Hearing Scheduled (Motion for Summary Judgment 07/23/2015 10:00 AM) Cross Motions	Jason D. Scott
7/2/2015	MOTN	CCLOWEAD	Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep)	Jason D. Scott
	MEMO	CCLOWEAD	Memorandum in Support of Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep)	Jason D. Scott
7/7/2015	HRSC	CCSTOKSN	Hearing Scheduled (Motion 07/15/2015 03:00 PM) to Strike	Jason D. Scott
7/8/2015	AFFD	CCGRANTR	Affidavit of Nicholas S Marshall in Response to Defendant's Motion for Summary Judgment	Jason D. Scott
7/13/2015	MISC	CCMYERHK	Plaintiff's Disclosure Of Trial Witnesses	Jason D. Scott
	RSPS	CCMYERHK	Plaintiff's Response In Objection To Motion To Strike	Jason D. Scott
	AFFD	CCMYERHK	Affidavit Of Nicholas S Marshall In Response To Defendant's Motion To Strike	Jason D. Scott

Estate Of Zippora Stahl, Kathleen Krucker vs. Idaho State Tax Commission

Date	Code	User		Judge
7/15/2015	DCHH	CCSTOKSN	Hearing result for Motion scheduled on 07/15/2015 03:00 PM: District Court Hearing Hel(Court Reporter: Cromwell Number of Transcript Pages for this hearing estimated: (<50) to Strike	Jason D. Scott
7/17/2015	ANSW	CCBARRSA	Answering Brief of Plaintiff in Response to Tax Commission's Motion for Summary Judgment (Marshall for Plaintiff)	Jason D. Scott
	MEMO	CCGRANTR	Reply Memorandum in Support of Tax Commission's Motion for Summary Judgment	Jason D. Scott
7/22/2015	ORDR	DCDUMOKA	Order on Motion to Strike	Jason D. Scott
7/29/2015	DCHH	CCSTOKSN	Hearing result for Motion for Summary Judgment scheduled on 07/23/2015 10:00 AM: District Court Hearing Held Court Reporter: Cromwell Number of Transcript Pages for this hearing estimated: (<100) Cross Motions	Jason D. Scott
7/31/2015	MEMO	DCDUMOKA	Memorandum Decision and Order on Cross-Motions for Summary Judgment	Jason D. Scott
8/21/2015	JDMT	CCSTOKSN	Judgment	Jason D. Scott
	CDIS	CCSTOKSN	Civil Disposition entered for: Idaho State Tax Commission, Defendant; Estate Of Zippora Stahl,, Plaintiff; Krucker, Kathleen, Plaintiff. Filing date: 8/21/2015	Jason D. Scott
	STAT	CCSTOKSN	STATUS CHANGED: Closed	Jason D. Scott
8/24/2015	HRVC	CCSTOKSN	Hearing result for Pretrial Conference scheduled on 11/04/2015 03:00 PM: Hearing Vacated	Jason D. Scott
	HRVC	CCSTOKSN	Hearing result for Court Trial scheduled on 12/07/2015 09:00 AM: Hearing Vacated 2	Jason D. Scott
9/3/2015	MOTN	TCMEREKV	Plaintiff's Motion For Reconsideration And For Amendment Of Judgment	Jason D. Scott
	MEMO	TCMEREKV	Plaintiff's Memorandum In Support Of Motion For Reconsideration And For Amendment Of Judgment	Jason D. Scott
9/11/2015	ORDR	DCDUMOKA	Order Establishing Briefing Schedule	Jason D. Scott
9/24/2015	MEMO	CCVIDASL	Memorandum Opposing Plaintiffs Motion for Reconsideration and for Amendment of Judgment	Jason D. Scott
10/1/2015	RPLY	CCVIDASL	Plaintiffs Reply in Support of Motion for Reconsideration and for Amendment of Judgment	Jason D. Scott
10/13/2015	ORDR	DCDOUGLI	Order for Supplemental Briefing	Jason D. Scott
10/30/2015	BREF	CCHEATJL	Defendant's Supplemental Brief Opposing Plaintiff's Motion For Reconsideration And For Amendment Of Judgment	Jason D. Scott
	MEMO	CCBOYIDR	Plaintiff's Memorandum in Response to Order for Supplemental Breifing	Jason D. Scott

Estate Of Zippora Stahl, Kathleen Krucker vs. Idaho State Tax Commission

Date	Code	User		Judge
10/30/2015	AFFD	CCBOYIDR	Affidavit of Tyler Rice in Response to Order for Supplemental Briefing	Jason D. Scott
11/16/2015	MEMO	DCDUMOKA	Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment	Jason D. Scott
12/23/2015	NOTA	CCMYERHK	NOTICE OF APPEAL	Jason D. Scott
	APSC	CCMYERHK	Appealed To The Supreme Court	Jason D. Scott
1/19/2016	RQST	CCWEEKKG	Plaintiff's Request for Additional Documents in the Record	Jason D. Scott
	RQST	CCWRIGRM	Request for Additional Documents in the Record	Jason D. Scott
2/10/2016	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43832	Jason D. Scott

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV OC 1500106 COMPLAINT Fee Category: A.A. Amount: $221

COMES NOW, Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, for a cause of action against Defendant, the Idaho State Tax Commission (the "Commission"), states, alleges and complains as follows:

1. The Estate is the decedent's estate of Zippora Stahl who died on June 26, 2010 and was domiciled in Jerome County, Idaho at the time of her death.

2. Kathleen M. Krucker was appointed as personal representative of the Estate on July 14, 2010 in a probate proceeding of the District Court of the Fifth Judicial District of Idaho and continues to properly act as the personal representative of the Estate.

3. The Commission is an agency of the State of Idaho and is responsible for the collection of the income tax imposed on Idaho taxable income pursuant to Idaho Code § 63-3001, *et seq.* (the "Idaho Income Tax Act").

4. The Commission first issued a Notice of Deficiency Determination dated July 25, 2013 (the "Notice of Deficiency") asserting a tax deficiency of $20,628.57 based on the Commission's calculation that the Estate's Idaho income tax liability under the Idaho Income Tax Act was $1,049,297 for the 2012 tax year (the "Tax Year").

5. The Estate timely filed a petition for redetermination, requesting a redetermination of the alleged deficiency for the Tax Year and claiming a $1,026,435 income tax refund (the "Refund Amount") for the Tax Year.

6. This Complaint is instituted by the Estate in response to a decision issued by the Commission in In the Matter of the Protest of Zippora Stahl Estate, Docket No. 26003 and dated October 7, 2014 (the "Decision"), upholding the Notice of Deficiency and denying the Estate's claim for the Refund Amount.

7. On December 30, 2014, the Estate delivered to the Commission the amount of $21,732 (the "Deposit Amount"), representing a deposit of 100% of the tax, penalty and interest (computed to December 31, 2014) demanded for payment by the Commission in the Decision. This amount satisfies the requirement under Idaho Code § 63-3049(b) that an appealing taxpayer must deposit an amount equal to twenty percent (20%) of the amount asserted before seeking review of the determination of the Commission.

8. The Decision was received by the Estate's authorized representative, Ahrens DeAngeli Law Group LLP, on October 8, 2014.

9. This Complaint is filed within 91 days of the receipt of the Decision in accordance with Idaho Code § 63-3049(a).

10. This Court has jurisdiction over this matter pursuant to Idaho Code §§ 63-3049(a) and 63-3074, and venue is proper with this Court pursuant to Idaho Code § 63-3049(a).

11. The Estate appeals the Decision pursuant to Idaho Code § 63-3049, and requests a refund of the Refund Amount and the Deposit Amount along with interest from the time of payment, pursuant to Idaho Code § 63-3074 with respect to both such amounts.

FACTUAL BACKGROUND

12. At the time of her death, the Decedent owned an interest in real estate located in Chino, California (the "Chino Ranch").

13. In the Estate's California ancillary probate proceeding, the date of death value of the Chino Ranch was determined to be $16,000,000.

14. The Estate sold the Chino Ranch for $16,318,909 on December 21, 2012.

INCOME TAX ANALYSIS

15. Idaho Code § 63-3024 imposes an income tax on the Idaho taxable income of estates.

16. Subject to appropriate adjustments described in Idaho Code § 63-3022, the Estate's Idaho taxable income for the Tax Year is properly calculated pursuant to the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012 ("IRC 2012"). Idaho Code §§§ 63-3026, 63-3011B and 63-3004 (2012).

17. IRC 2012 requires that gain recognized from the sale of the Chino Ranch be determined by subtracting such property's adjusted income tax basis from the amount realized on the sale of the property. Internal Revenue Code § 1001(a) (2012).

18. IRC 2012 provides that the income tax basis of property acquired by a decedent's estate from a decedent, such as the Chino Ranch, is the fair market value of such property at the date of the decedent's death. Internal Revenue Code § 1014(a)(1), (b)(1) (2012).

19. Based on the $16,000,000 date of death value of the Chino Ranch at the decedent's date of death and the Chino Ranch's $16,318,909 sales price, the gain recognized by the Estate on the sale of the Chino Ranch is $318,909 as calculated pursuant to IRC 2012 and the Idaho Income Tax Act.

20. In the Decision, the Commission improperly takes the position that the Chino Ranch's income tax basis should be determined pursuant to § 301(c) of United States Public Law

111-312 rather than pursuant to § 1014 of the Internal Revenue Code as in effect on January 1, 2012, as required by the Idaho Income Tax Act. Therefore, the Commission contends that the Estate's income tax basis in the Chino Ranch was $1,946,489 and that the amount of gain recognized by the Estate on the sale was $14,372,420 rather than $318,909 as properly calculated in accordance with IRC 2012 and the Idaho Income Tax Act.

21. The Commission's demand for the payment of the Deposit Amount and the Commission's denial of the Estate's claim for a refund of the Refund Amount is improper because § 301(c) of United States Public Law 111-312 is not part of IRC 2012 or the Idaho Income Tax Act.

22. WHEREFORE, the Estate hereby requests that its Complaint be deemed good and sufficient, and after due proceedings had, there be judgment entered herein in favor of the Estate and against the Commission, abating the deficiency assessment and ordering the Commission to grant the refund for the entire Deposit Amount ($21,732) and the entire Refund Amount ($1,026,435) with interest from the time of payment as provided by law. The Estate further requests all other general and equitable relief to which it may be entitled, including costs and attorneys fees.

Dated this 6th day of January, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Attorney for Plaintiff

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL

DAVID B. YOUNG [ISB # 6380]
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Attorneys for the Idaho State Tax Commission

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner-Plaintiff, -vs- IDAHO STATE TAX COMMISSION, Respondent-Defendant.	CASE NO. CVOC1500106 ANSWER

NOW the Idaho State Tax Commission (Commission), by and through its attorney, David B. Young, Deputy Attorney General, and answers the Petitioner-Plaintiff's Complaint.

I.

STANDARD AND SCOPE OF REVIEW

This Action Should Proceed as an Original *De Novo* Court Trial under Idaho Code § 63-3049. This Action Should Not Proceed as a Petition for Judicial Review under I.R.C.P. 84 or the Idaho Administrative Procedure Act.

An appeal of a State Tax Commission decision is governed by Idaho Code § 63-3049. Idaho Code § 63-3049 states that a taxpayer may appeal a decision of the Tax Commission by

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filing a complaint with the district court. The case is to proceed as other civil cases, but is to be a bench trial. The standard of review for this appeal is *de novo*. Parker v. Idaho State Tax Commission, 148 Idaho 842, 230 P.3d 734 (2010). Thus, the case is treated as a regular civil action under the Idaho Rules of Civil Procedure, allowing for discovery, depositions, etc. There is no submission of an agency record as would happen under I.R.C.P. 84 or the Idaho Administrative Procedure Act.

This case is not a "petition for judicial review" governed by I.R.C.P. 84. Rule 84(a)(1) instructs that "[w]hen judicial review of an action of a state agency or local government is expressly provided by statute but no stated procedure or standard of review is provided in that statute, then Rule 84 provides the procedure for the district Court's judicial review." Idaho Code § 63-3049 expressly provides the procedure and standard of review for the judicial review of a "redetermination by the state tax commission" (i.e., a final decision of the Tax Commission), and therefore the procedures of I.R.C.P. 84 do not apply.

Also, this case is not a "petition for judicial review" governed by the Idaho Administrative Procedures Act. The administrative hearing and appeals process before the Tax Commission is not conducted under the Administrative Procedures Act. Idaho Code § 63-107 (hearings before the Tax Commission concerning a redetermination of taxes "are not contested cases within the meaning of chapter 52, title 67, Idaho Code"); *see also*, Idaho Code § 67-5240. The Tax Commission does not record the hearings or otherwise compile an administrative record. Accordingly, an appeal from a decision of the Tax Commission cannot be confined to a review of the record below, but must proceed as an original action in the district court.

II.

RESPONSES TO COMPLAINT

The Commission responds to the factual allegations in each paragraph of the Complaint as set forth below, and denies each and every allegation not specifically admitted.

1. The Commission admits that the taxpayer associated with this cause of action is the Estate of Zippora Stahl, but is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 1 of Plaintiff's Complaint, and therefore denies the same.

2. The Commission admits that Kathleen M. Krucker is listed as the personal representative for the Estate of Zippora Stahl in its filings with the Idaho State Tax Commission, but is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 2 of Plaintiff's Complaint, and therefore denies the same.

3. The Commission admits the allegations in paragraph 3 of Plaintiff's Complaint.

4. The Commission admits the allegations in paragraph 4 of Plaintiff's Complaint.

5. The Commission admits the allegations in paragraph 5 of Plaintiff's Complaint.

6. The Commission admits the allegations in paragraph 6 of Plaintiff's Complaint.

7. The Commission admits the allegations in paragraph 7 of Plaintiff's Complaint.

8. The Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of Plaintiff's Complaint, and therefore denies the same.

9. The Commission admits the allegations in paragraph 9 of Plaintiff's Complaint.

10. The Commission admits the allegations in paragraph 10 of Plaintiff's Complaint.

11. As to paragraph 11 of Plaintiff's Complaint, the Commission admits that the Plaintiff is appealing the Commission's October 7, 2014 Decision herein; to the extent paragraph 11 of Plaintiff's Complaint is the Plaintiff's statement of its requested relief, or is a statement for judicial review as required by Rule 84(d)(5), I.R.C.P., there are no factual allegations to admit or deny and no response is required.

12. The Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of Plaintiff's Complaint, and therefore denies the same.

13. The Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of Plaintiff's Complaint, and therefore denies the same.

14. The Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of Plaintiff's Complaint, and therefore denies the same.

15. As to paragraph 15 of the Plaintiff's Complaint, the Commission admits that Idaho Code § 63-3024 imposes a tax measured by Idaho taxable income upon estates.

16. The Commission denies the allegations in paragraph 16 of Plaintiff's Complaint.

17. The Commission denies the allegations in paragraph 17 of Plaintiff's Complaint.

18. The Commission denies the allegations in paragraph 18 of Plaintiff's Complaint.

19. The Commission denies the allegations in paragraph 19 of Plaintiff's Complaint.

20. The Commission denies the allegations in paragraph 20 of Plaintiff's Complaint.

21. The Commission denies the allegations in paragraph 21 of Plaintiff's Complaint.

22. The Commission denies the allegations in paragraph 22 of Plaintiff's Complaint.

III.

PRAYER

THEREFORE, Defendant, the Idaho State Tax Commission, asks this Court for the following relief:

1. Dismiss the Complaint for failure to state a ground upon which relief can be granted, or in the alternative, grant a judgment in favor of the Commission based upon the pleadings, and allowing Plaintiff to take nothing by its Complaint;

2. Affirm the Decision of the Commission;

3. Order Plaintiffs to pay all of the Commission's costs and reasonable attorneys' fees incurred in defending this action pursuant to Idaho Code §§ 63-3049, 12-117, and 12-121; and

4. Grant such other and further relief as this Court deems reasonable and necessary to accomplish the demands of justice.

DATED this 27th day of January 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2015, I caused to be served a true and correct copy of the within and foregoing Tax Commission's ANSWER upon Petitioner indicated below:

NICHOLAS S MARSHALL
DAVID J WILSON
TYLER RICE
AHRENS DEANGELI LAW GROUP LLP
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-15-00106 PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

COMES NOW, Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, and moves this Court for a summary adjudication ruling that the Estate received a step-up in the income tax basis of appreciated real estate located in Chino, California (the "Chino Ranch") upon Zippora Stahl's death for purposes of the Idaho Act, Idaho Code § 63-3001 *et seq.*

(the "Idaho Act").[1] Summary judgment is necessary to prevent the unwarranted collection of tax by the Idaho State Tax Commission (the "Commission") in contravention of the plain and unambiguous language of the Idaho Act.

II. ISSUE FOR RESOLUTION

This is a straightforward case of statutory interpretation. As explained below, the unambiguous text of the Idaho Act requires taxpayers to calculate their 2012 Idaho taxable income pursuant to the Internal Revenue Code of 1986 as it existed on January 1, 2012 (the "Internal Revenue Code of 1986").[2] The January 1, 2012 version of the Internal Revenue Code requires the income tax basis of an asset that is owned by a decedent at death and sold by that decedent's estate to be determined pursuant to Internal Revenue Code § 1014.[3] Therefore, the issue presented here is whether the Commission may disregard both (1) the Idaho Legislature's unambiguous incorporation of the Internal Revenue Code of 1986 into the Idaho Act and (2) the Internal Revenue Code of 1986's clear requirement that the income tax basis of assets owned by a decedent at death be determined pursuant to § 1014.

With a disregard for the unambiguous language of the Idaho Act and the Internal Revenue Code of 1986, the Commission argues that the Estate's income tax basis in property owned by Mrs. Stahl at her death should be determined pursuant to § 1022 of the Internal Revenue Code as it was in effect for the years 2001- 2009 and Section 301(c) of Public Law 111-

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[1] Except where otherwise specified, all references to the "Idaho Act" are to Idaho Code 63-3001 *et. seq.* as amended and in effect during the 2012 calendar year, which was the year the Chino Ranch was sold.

[2] Unless otherwise indicated, references to "the Internal Revenue Code of 1986" refer to the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012.

[3] In almost all cases, unless otherwise indicated, references to sections ("§") refer to sections of the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012. However, references to "§ 1022" refer to Section 1022 of the Internal Revenue Code as it existed for the years 2001- 2009, before it was retroactively repealed on December 17, 2010.

312 ("Public Law Election"). Inexplicably, the Commission takes this position even though (1) § 1022 was retroactively repealed from the Internal Revenue Code in 2010 and, therefore, was not incorporated into the Idaho Act by the Idaho Legislature for the purposes of calculating the Estate's taxable income in 2012[4] and (2) the Public Law Election was never part of the Internal Revenue Code and, therefore, was never incorporated into the Idaho Act by the Idaho Legislature.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

Zippora Stahl ("Mrs. Stahl") died on June 26, 2010 while domiciled in Jerome County, Idaho. At the time of her death, Mrs. Stahl owned an interest in the Chino Ranch. The fair market value of the Chino Ranch on the date of Mrs. Stahl's death was determined to be $16,000,000 during the Estate's ancillary probate proceeding in California.

On January 17, 2012, the Estate filed Federal Form 8939 with the Internal Revenue Service, electing, pursuant to the Public Law Election, to opt out of imposition of the estate tax that would otherwise have been imposed by the federal government on the estates of decedents dying in 2010. The State of Idaho has not imposed any form of estate or inheritance tax on the estates of Idaho decedents since 2005.[5] Therefore, the Estate's filing of the Public Law Election produced a federal tax benefit but no Idaho state tax benefit.

The Estate sold the Chino Ranch on December 21, 2012 for $16,318,909. On April 15, 2013, the Estate filed an IRS Form 1041 reflecting $14,372,420.00 in federal gain from the sale

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[4] Section 301(a) of Public Law 111-312 repealed § 1022 of the Internal Revenue Code on December 17, 2010. As indicated in Section 301(a) of Public Law 111-312, the repeal of § 1022 of the Internal Revenue Code applies "as if [§ 1022] ***had never been enacted***." (Emphasis added).

[5] Technically, the State of Idaho imposes an estate tax equal in amount to the credit for state death taxes allowed by § 2011 of the Internal Revenue Code. However, no credit for state death taxes has been allowed pursuant to § 2011 since it was terminated with respect to decedents dying after 2005. Therefore, the estate tax levied by the State of Idaho is $0.00. *See* Idaho Code § 14-403; Internal Revenue Code § 2011(f).

of the Chino Ranch, as required by the Public Law Election, and paid the requisite federal income taxes thereon. Contemporaneously, the Estate filed Idaho Form 66 for tax year 2012 ("Original Form 66") mistakenly reporting $14,872,219.00 of Idaho adjusted income and $1,029,107.00 of total Idaho tax liability resulting from the sale of the Chino Ranch, which the Estate timely paid.

On July 25, 2013, the Commission sent the Estate a Notice of Deficiency Determination (the "Original NODD") imposing a $20,628.57 deficiency based on the Commission's adjustment of the Estate's tax credit for taxes paid to the State of California. On September 26, 2013, the Estate filed a timely protest (the "Original Protest") which included an Amended Form 66 ("Amended Form 66") reporting $309,469.00 of Idaho adjusted income and $2,672.00 of total Idaho tax liability. The Amended Form 66 requested a refund of $1,026,435.00 of the 2012 Idaho income taxes previously paid.

On November 27, 2013, the Commission sent a second Notice of Deficiency Determination (the "Refund NODD") denying the Estate's refund request. In response, the Estate timely filed a second protest on January 16, 2014. On April 24, 2014 an informal hearing took place at the offices of the Commission. After a period of deliberation, the Commission issued a Decision on October 7, 2014 (the "Decision") formally approving, affirming, and making final the Original NODD as well as the Refund NODD. The Decision noted that the Estate made a federal election "to use a modified carryover basis for [Mrs. Stahl's] assets in exchange for not having to pay the federal estate tax." Under the belief that the Public Law Election and former § 1022 of the Internal Revenue Code had made the "modified carryover basis" approach applicable to the calculation of Idaho taxable income under the Idaho Act, the Decision reaffirmed the Commission's denial of the Estate's $1,026,435.00 refund request and ordered the Estate to pay $21,732.00 in additional taxes, penalties, and interest. In response to the Commission's Decision, the Estate properly and timely filed its complaint in the above-captioned matter on January 6, 2015.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment should be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho R. Civ. P. 56(c); *Rawson v. United Steelworkers of America*, 111 Idaho 630, 633 (1986). While the Court is required to "liberally construe" all facts and inferences in the record in favor of the party opposing the motion, summary judgment must be granted when no material facts are in dispute. *Rawson*, 111 Idaho at 633.

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404 (Ct. App. 1992). Summary judgment must be granted once that burden is met, unless the record contains conflicting inferences or reasonable minds might reach different conclusions. *Farmer's Ins. Co. of Idaho v. Brown*, 97 Idaho 380, 381 (1976). A motion for summary judgment should only be denied if reasonable people might reach different conclusions based on the same set of operative facts. *Doe v. Durtschi*, 110 Idaho 466, 470 (1986).

Here, partial summary judgment in favor of the Estate is appropriate because no material facts are in dispute and all relevant law, as analyzed below, unquestionably provides that the Estate received a step-up in its income tax basis in the Chino Ranch pursuant to § 1014 and the Idaho Act.

V. THE ESTATE'S IDAHO TAXABLE INCOME FOR 2012 IS CALCULATED PURSUANT TO THE INTERNAL REVENUE CODE OF 1986

A. Statutory Interpretation.

Idaho law governing statutory interpretation is clear. Words in statutes are "given their plain, usual and ordinary meanings." *State v. Dunlap*, 155 Idaho 345, 361 (2013). Further, when the words of a statute are unambiguous, the clearly expressed intent of the Legislature is given

effect. *Id.* at 361-62. Moreover, "where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667 (1993), *abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011). In other words, "If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska*, 151 Idaho at 893. The Idaho Supreme Court also applied this principle to the Commission when it explained, "The Tax Commission's function is to enforce the law ***as written***." *Bogner v. State Dept. of Revenue and Taxation, State Tax Comm'n*, 107 Idaho 854, 856 (1984) (emphasis added). Finally, tax statutes "must be construed ***as favorably as possible to the taxpayer and strictly against the taxing authority***." *J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968) (emphasis added).

B. The Internal Revenue Code of 1986 Is Incorporated into the Idaho Act.

Here, the plain, unambiguous statutory language of the Idaho Act incorporates the codified statutes set forth in the Internal Revenue Code of 1986. Idaho Code § 63-3024 imposes a tax on the "Idaho taxable income" of individuals, estates, and trusts. Idaho Code § 63-3011C defines "Idaho taxable income" as "***taxable income*** as modified pursuant to the Idaho adjustments specifically provided in [the Idaho Act]." (Emphasis added). Idaho Code § 63-3011B defines "taxable income" as "federal taxable income ***as determined under the Internal Revenue Code***." (Emphasis added). Likewise, Idaho Code § 63-3002 indicates that the provisions of the Idaho Act are to be "identical to the provisions of the Federal Internal Revenue Code." Finally, Idaho Code § 63-3004, as in effect from January 1, 2012 through December 31, 2012,[6] defines "Internal Revenue Code" as "***the Internal Revenue Code of 1986*** of the United States, as amended, and in effect on the first day of January, 2012." (Emphasis added). Thus,

[6] The Idaho Legislature amends Idaho Code § 63-3004 every year to incorporate recent amendments to the Internal Revenue Code of 1986. *See* House Bill No. 355, vol. 1, c. 2, approved February 6, 2012.

the Idaho Legislature's plain and unambiguous language clearly incorporates, into the Idaho Act, the Internal Revenue Code of 1986 as it existed on January 1, 2012.

C. The Internal Revenue Code of 1986 = Title 26 of the United States Code.

As indicated above, words of a statute are to be given their plain, usual, and ordinary meaning. The plain, usual, and ordinary meaning of the term "Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012" is beyond question. That term refers only to those statutes codified in Title 26 of the United States Code as in effect on January 1, 2012. Section 08 of Rule 010 of the Commission's own Income Tax Administrative Rules (the "Administrative Rules") provides that "[t]erms not otherwise defined in the [Idaho Act or the Administrative Rules] shall have the same meaning as is assigned to them by the Internal Revenue Code, including Section 7701 relating to definitions of terms." IDAPA 35.01.01.010.08. Section 7701(a)(29) defines the "Internal Revenue Code of 1986" (a term not defined in the Idaho Act or the Administrative Rules) as "this title" (i.e., Title 26 of the United States Code), which by definition only contains federal tax statutes codified as part of Title 26. Likewise, the U.S.C.A. Popular Name Table for Acts of Congress (West 2015) lists "26 USCA § 1 et seq." as the Table of Contents for the Internal Revenue Code of 1986. Accordingly, the plain, usual, and ordinary meaning of the Idaho Legislature's reference to the "Internal Revenue Code of 1986, as amended and in effect on the first day of January 2012" is a reference to the federal statutes set forth at 26 U.S.C. § 1 et seq. as they existed on January 1, 2012.

D. Section 1014 of the Internal Revenue Code of 1986, Measures Income from Sales of Property in a Decedent's Estate by Subtracting the Property's Date-of-Death Fair Market Value from the Sale Proceeds Realized.

Title 26 of the United States Code is comprised of the provisions set forth in Internal Revenue Code Sections 1 – 9834. The sections of the Internal Revenue Code of 1986 that are relevant to the calculation of the Estate's Idaho taxable income in 2012 are discussed below.

Section 63(a) defines "taxable income" as "gross income" minus allowable deductions. Section 61(a)(3) defines "gross income" to include "[g]ains from dealings in property." Section 1001(a) defines "gain" on the sale of property as the amount realized on the sale (i.e., the sale proceeds) minus "the adjusted basis." Section 1011 defines "adjusted basis" as the taxpayer's "basis" as defined in applicable provisions of Subchapter O of Chapter 1 of Title 26 of the U.S. Code ("Subchapter O"). When the property at issue is acquired from a decedent, § 1014 of Subchapter O creates a special rule, defining the property's basis as "the fair market value of the property at the date of the decedent's death." This concept is commonly referred to as the "stepped-up basis," which means the sale of property owned by a decedent at death is generally taxed only on the amount by which the sale proceeds exceed the property's value at the time of the decedent's death.[7]

As noted, the Idaho Legislature's plain and unambiguous language incorporates, into the Idaho Act, the Internal Revenue Code as it is set forth in Title 26 of the United States Code as of January 1, 2012. Section 1014 is part of the Internal Revenue Code set forth in Title 26 of the United States Code as of January 1, 2012. Therefore, the Idaho Act mandates a § 1014 step-up of the Estate's basis in the Chino Ranch to its date of death value for the purpose of calculating the Estate's 2012 Idaho taxable income.

VI. THE COMMISSION'S POSITION THAT GAIN SHOULD BE CALCULATED PURSUANT TO REPEALED § 1022 AND THE PUBLIC LAW ELECTION IS CONTRARY TO THE IDAHO ACT

Contrary to the clear and unambiguous language of the Idaho Act and the Internal Revenue Code of 1986, which provides for a step-up in basis at death under § 1014, the

[7] The stepped-up basis at death is generally advantageous to taxpayers in contrast to other gratuitous transfers, such as gifts, where the recipient's basis is "the same as it would be in the hands of the donor." § 1015. This is commonly called a "carryover basis" which requires the donee-seller to pay taxes on the sale proceeds minus the amount the donor paid to acquire the property. In instances where the donor owned the property for many years, a carryover basis is often much lower than a stepped-up basis, resulting in significantly higher taxable gains.

Commission takes the position that the Estate's basis in the Chino Ranch is determined pursuant to § 1022 and the Public Law Election. The Commission's position, however, is meritless because (1) § 1022 was not part of the Internal Revenue Code of 1986 on January 1, 2012 when the Idaho Legislature incorporated it into the Idaho Act, and (2) the Public Law Election was never part of the Internal Revenue Code of 1986. Therefore, neither § 1022 nor the Public Law Election was part of the Idaho Act in 2012.

A. Section 1022 was not Incorporated into the Idaho Tax Act in 2012.

On June 7, 2001, President George W. Bush signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Pub. L. 107-16, 115 Stat. 38. For decedents dying after December 31, 2009, EGTRRA repealed the federal estate tax, repealed the § 1014 step-up in basis rules, and added § 1022 to the Internal Revenue Code. EGTRRA was in effect until its retroactive repeal on December 17, 2010, when President Barack Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"). Pub. L 111-312, 124 Stat. 3296. Section 301(a) of TRUIRJCA amended the Internal Revenue Code of 1986 "to read as [§§ 1014 and 1022] would read if [EGTRRA] ***had never been enacted***." (Emphasis added).[8] Therefore, § 1014 was reinstated and § 1022, having been added to the Internal Revenue Code by EGTRRA, was expressly and retroactively removed from the Internal Revenue Code.

As discussed above, the Idaho Act incorporated the provisions of the Internal Revenue Code as those provisions existed and were in effect on January 1, 2012.[9] Because § 1022 was retroactively repealed from the Internal Revenue Code more than a full year before the Idaho Legislature incorporated the 2012 version of the Internal Revenue Code into the Idaho Act,

[8] The complete text of Section 301(a) of Pub. L. 107-16, 115 Stat. 38 states, "Each provision of law amended by subtitle A or E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended to read as such provision would read if such subtitle had never been enacted." Sections 1014 and 1022 are part of Subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001.

[9] *See, infra*, Section V.B. and Idaho Code § 63-3004.

§ 1022 was not incorporated into the Idaho Act by the reference to "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012." Therefore, repealed § 1022 is irrelevant to the calculation of the Estate's Idaho taxable income for 2012.

B. The Public Law Election Is Not Part of the Internal Revenue Code of 1986.

In addition to removing § 1022 from the Internal Revenue Code of 1986, Section 301(c) of TRUIRJCA provided the Public Law Election exclusively for the estates of decedents dying in 2010. As a result, an electing estate could opt out of the federal estate tax and take a federal carryover basis in the decedent's assets notwithstanding the Internal Revenue Code's express language to the contrary. This *quid pro quo* existed only at the federal level outside the confines of the Internal Revenue Code and allowed estates of decedents who died in 2010 the benefit of being exempted from federal estate tax *in exchange* for higher future federal income tax liability associated with a federal carryover basis. Importantly, the State of Idaho, which did not impose a state estate tax on the Estate, is not a party to this *quid pro quo*.

The Public Law Election was never added to the Internal Revenue Code of 1986 as compiled in Title 26 of the U.S. Code. Unlike § 301(a) of TRUIRJCA, which affirmatively amended the Internal Revenue Code of 1986 to remove § 1022, the text of the Public Law Election does not purport to amend any section or other provision of the Internal Revenue Code of 1986. Moreover, the Internal Revenue Code of 1986 has never been amended by any other Public Law for the purpose of including or codifying the Public Law Election as part of Title 26 of the United States Code. As such, the Public Law Election is not now—and has never been—part of the body of laws known as the "Internal Revenue Code." Accordingly, the text of the Public Law Election is not found in any published version of the Internal Revenue Code.

Despite the fact that the Public Law Election has never been part of the Internal Revenue Code, the Commission refuses to acknowledge one especially critical point: not all federal tax law is codified as part of the Internal Revenue Code and set forth as part of title 26 of the United States Code. The Public Law Election set forth in Section 301(c) of Public Law 111-312 is one

of those provisions. Freestanding laws that are part of the general body of federal tax law but not codified as part of the Internal Revenue Code are known in tax parlance as "non-code" or "off-code" provisions.

The reality that the Public Law Election is a freestanding, off-code provision that is not part of the Internal Revenue Code of 1986 is confirmed by the Office of the Law Revision Counsel of the U.S. House of Representatives as set forth in the affidavit of current Law Revisions Counsel, Ralph V. Seep, which is filed contemporaneously herewith ("Seep Affidavit"). The Office of the Law Revision Counsel of the U.S. House of Representatives is appointed by the Speaker of the United States House of Representatives and is responsible for updating the U.S. Code to reflect any amendments and revisions made to the U.S. Code by Congress. *See* 2 U.S.C.A. §§ 285 – 285g. In connection with analyzing the issues before this Court, counsel for the Plaintiff discussed with Mr. Seep the Public Law Election's relationship to the Internal Revenue Code of 1986. Mr. Seep indicated that the Public Law Election "did not amend the Internal Revenue Code of 1986, Title 26 of the United States Code." (Seep Affidavit, ¶ 3.) Mr. Seep further indicated that Section 301(c) of Public Law 111-312, which enacted the Public Law Election, is a "freestanding provision that [the Office of the Law Revision Counsel] classified as a statutory note under section 2001 of Title 26 of the United States Code" and is "not technically part of the Internal Revenue Code of 1986." (Seep Affidavit, ¶ 3.) In other words, the Public Law Election is an off-code provision that is not part of the Internal Revenue Code.

C. Off-Code Provisions are not Unusual under Federal Law.

It is not unusual to find off-code provisions that are freestanding parts of the general body of federal tax law but not part of the Internal Revenue Code of 1986. One legal expert explained the situation as follows: "[S]ome income tax provisions enacted by Congress ***are not part of the Code***. In many cases, these provisions ***can only be found in the tax act itself*** and are generally referred to as non-code (or off-code) provisions. ... ***Like non-code provisions***, a tax provision in the legislative history is not part of the Internal Revenue Code." Christopher H. Hanna, *The*

Magic in the Tax Legislative Process, 59 SMU L. REV. 649, 658 (2006) (emphasis added). The United States Congress frequently includes off-code provisions in its tax acts in order (1) to provide transitional relief, (2) to direct the Treasury Department to study an area of tax law, (3) to provide "hidden" tax breaks to certain industries or particular taxpayers, and (4) to "sunset" temporary Internal Revenue Code provisions. *Id.* at 658-59.

D. Off-Code Provisions Are Not Incorporated into the Idaho Act by Reference to the Internal Revenue Code of 1986.

As an off-code provision that is not part of Title 26 of the U.S. Code, the Public Law Election could not have been incorporated as part of the Idaho Act by the Idaho Legislature's reference to the "Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012." Furthermore, if the Idaho Legislature had intended to incorporate off-code provisions as part of the Idaho Act, it would have clearly expressed that intent in the statute. Stated differently, the Idaho Legislature's absence of expressed intent to incorporate off-code provisions as part of the Idaho Act indicates its intention to not incorporate such provisions.

This canon of statutory construction, known as *expressio unius est exclusio alterius*, was applied by the Idaho Supreme Court when it ruled that a private restrictive land use covenant prohibiting more than two families from residing in a single home did not violate Idaho Code §§ 67-6530 and 67-6531 which require "zoning laws" to define the term "single family dwelling" to include any home in which eight or fewer unrelated elderly persons reside. *D & M Country Estates Homeowners Ass'n v. Romriell*, 138 Idaho 160, 165 (2002). The Court reasoned, "where a statute specifies certain things, ***designation of the specific excludes other things not mentioned*** . . . . Thus, the reference to 'zoning' specifically excludes the statute's application to private restrictive covenants, which were not mentioned." *Id.* (emphasis added); *see also Drainage Dist. No. 2 of Ada County v. Ada County*, 38 Idaho 778 (1924) ("The fact that these other sections [of the Idaho Codified Statutes] exempt certain parties from liability for fees, and do not include drainage districts in the exempted classes, is valid ground for holding that

such districts are not exempted."). Furthermore, the Court in *Romriell* also indicated that "courts must construe a statute under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed." 138 Idaho at 165.

The principles of statutory construction set forth in *Romriell* and *Drainage Dist. No. 2 of Ada County* are concisely summarized in 2B SUTHERLAND STATUTORY CONSTRUCTION § 51:7 (7th ed.), which explains "where a statute refers specifically to another statute by title or section number, ***there is no reason to think its drafters meant to incorporate more than the provision specifically referred to***." (quoting *Matter of Commitment of Edward S.*, 570 A.2d 917, 925 (N.J. 1990)) (emphasis added). Thus, the Idaho Legislature's incorporation into the Idaho Act of those specific federal tax statutes known as the "Internal Revenue Code of 1986" manifests the legislature's clear intent not to incorporate those provisions of federal tax laws which are not part of the Internal Revenue Code of 1986, such as the Public Law Election and repealed § 1022, especially since under *Romriell* the Idaho Legislature is presumed to know that those off-code provisions were not part of the Internal Revenue Code of 1986 when it incorporated the Internal Revenue Code of 1986 into the Idaho Act on February 6, 2012.

E. The Statutes of States Choosing to Incorporate Off-Code Provisions of Federal Law into Their Own State Income Tax Acts Affirmatively Reference Off-Code Provisions.

Instructively, state legislatures that desire to incorporate off-code provisions do so by explicitly referencing them. For example, Colorado imposes an income tax on taxable income determined pursuant to § 63 of the "internal revenue code," and unlike Idaho, specifically expanded the definition of "internal revenue code" to include not only "the provisions of the federal 'Internal Revenue Code of 1986', as amended," but also "***other provisions of the laws of the United States relating to federal income taxes,*** as the same may become effective at any time or from time to time, for the taxable year." Colo. Rev. Stat. §§ 39-22-103; 39-22-104 (emphasis added). Accordingly, the Colorado Legislature incorporated both the Internal Revenue Code of 1986, which the statutory footnote to § 39-22-103 defines as "26 U.S.C.A. § et

seq.," as well as the off-code provisions of federal tax law. But for Colorado's reference to '*other provisions of the laws of the United States relating to federal income taxes*,' no off-code provisions would have been incorporated into Colorado's income tax regime. Likewise, Minnesota's income tax act broadens its definition of "Internal Revenue Code" to encompass "***any uncodified provision in federal law*** that relates to provisions of the Internal Revenue Code that are incorporated into Minnesota law." Minn. Stat. § 290.01 Subd. 31 (emphasis added). Utah also augments its references to the Internal Revenue Code to include "***other provisions of the laws of the United States*** relating to federal income taxes that are in effect for the taxable year." Utah Code Ann. § 59-10-103(2)(b) (emphasis added). Like Colorado, Minnesota, and Utah, the Idaho Legislature could have incorporated federal off-code provisions such as the Public Law Election into the Idaho Act. However, the Idaho Legislature clearly did not do so.

When states fail to expressly incorporate off-code federal tax provisions into their tax regimes, such provisions do not become part of their income tax acts. As an example, the California Personal Income Tax Law incorporates portions of the Internal Revenue Code by reference. *See, e.g.*, Cal. Rev. & Tax. Code § 18031 (incorporating the Internal Revenue Code statutes for determining gain and loss on disposition of property, such as § 1041). In 1984, California Revenue and Taxation Code § 17024.5 defined the Internal Revenue Code as "Title 26 of the United States Code, including all amendments thereto..." Although in 1984 the California Personal Income Tax Law incorporated § 1041 by reference, the California Franchise Tax Board ruled that California taxpayers were ineligible to utilize, for state tax purposes, a federal election that would provide for the retroactive application of § 1041 that was contained in an off-code provision of Tax Reform Act of 1984. Cal. Fran. Tax. Bd. Notice, May 27, 1988, 1988 WL 188417. The California Franchise Tax Board stated, "Both Sections 17024.5 and 18031 refer to the Internal Revenue Code ***and not to uncodified provisions of Acts amending or adding to that Code.***" *Id.* (emphasis added).

In 1988, and presumably in response to the Franchise Tax Board's ruling, the California Legislature amended § 17024.5 of the Revenue and Taxation Code to incorporate "uncodified

provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of [the Personal Income Tax Law]," thus becoming another state to expressly adopt off-code provisions. By contrast, Idaho did not follow the examples of states like California, Colorado, Minnesota, and Utah by expressly incorporating off-code provisions into the Idaho Act. Given how easily the Idaho Legislature could have adopted off-code federal tax laws by employing specific statutory language, as illustrated in the tax acts of California, Colorado, Minnesota, and Utah, declining to utilize such language indicates the legislature's intent to not incorporate off-code provisions into the Idaho Act.

F. Idaho Legislature's Decision not to Incorporate Off-Code Provisions Makes Sense from a Policy Perspective.

The Idaho Legislature's decision to not incorporate off-code provisions into the Idaho Act is eminently reasonable from a policy perspective. Construing the Idaho Act to incorporate off-code provisions would result in the unintended enactment of hidden tax breaks and transitory provisions that have no relevance or benefit to Idaho taxpayers. For example, § 1608 of the Tax Reform Act of 1986 preserved charitable deductions to Louisiana State University and the University of Texas for donors who "receive [in return for their donations] the right to seating or the right to purchase seating in an athletic stadium of such institution." Pub. L. No. 99-514, 100 Stat. 2085, 2771. Another example of off-code tax breaks is § 977 of the Taxpayer Relief Act of 1997, which enabled Amtrak to carry back its net operating losses several years beyond the carry back period allowed under the Internal Revenue Code of 1986. Pub. L. No. 105-34, 111 Stat. 788, 899. There is no reason to believe that the Idaho Legislature would have intended to incorporate those off-code tax break provisions into the Idaho Act.

Incorporating all off-code provisions of federal acts would also unnecessarily complicate Idaho's legislative process. To know the full extent of federal tax law, "a person would have to research each tax act to find a particular non-code provision or be informed in some way as to which tax act contains the non-code provision in question." Hanna, *supra*, at 661. If the Idaho Act is construed to incorporate off-code provisions, the Legislature will be tasked with

researching every federal tax act to ensure that undesirable hidden tax breaks or irrelevant transitory provisions are not incorporated into the Idaho Act. The Legislature's custom of re-incorporating the Internal Revenue Code of 1986 every year is particularly non-conducive to the Commission's expansive interpretation of Idaho Code § 63-3004.

Moreover, incorporating the off-code Public Law Election would result in an unwarranted windfall for the Commission at the expense of Idaho taxpayers, which was likely not intended by the Idaho Legislature. Like many off-code provisions, the Public Law Election was designed to provide transitionary relief to estates of decedents dying in 2010 who would have otherwise lost the benefit of EGTRRA's repeal of the federal estate tax. The Public Law Election was contrived as a federal-level *quid pro quo* whereby the Estate could choose to currently forego paying federal estate taxes in exchange for paying higher federal income taxes in the future as the result of the loss of the federal stepped-up basis at death. No *quid pro quo* exists at the state level because Idaho does not impose estate taxes regardless of whether the Estate receives a stepped-up basis at death.[10] Therefore, it should be apparent that the Idaho Legislature could not have intended to impose a confiscatory state income tax penalty on the Estate simply because it elected to forego the payment of federal (but not state) estate taxes.

To further demonstrate the absurdity of incorporating the Public Law Election into the Idaho Act, doing so would simply mean that the Estate had the choice of electing to forego Idaho estate tax liability (which have been zero under Idaho Code § 14-403 since 2005) and take an Idaho carryover basis (which it did not do). Declining to affirmatively make such an election under the Idaho Act would simply subject the Estate to Idaho estate taxes (again, zero under Idaho Code § 14-403) and grant the Estate an Idaho stepped-up basis in the Chino Ranch.

For the foregoing reasons, the Idaho Legislature's decision to not incorporate off-code provisions into the Idaho is reasonable from a policy perspective.

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[10] Idaho Code § 14-403 imposes an estate tax on Idaho residents "in an amount equal to the federal credit" for state death taxes allowed under § 2011. Section 2011(f) terminated the federal credit for state death taxes for estates of decedents dying after December 31, 2004.

G. Divergence of State and Federal Law is not Unusual.

To be sure, divergence between an incorporated statute and an effective federal law is not unusual. In one exemplary case, the Idaho Supreme Court recognized the enduring effect of a 1955 federal voting law that the Idaho Legislature adopted by reference, even though Congress had later repealed the 1955 statute at the federal level. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 849-50 (2012). The Court noted:

> Where a reference statute incorporates the terms of one statute into the provisions of another act, the two statutes coexist ***as separate distinct legislative enactments, each having its appointed sphere of action***. . . . Accordingly, [a]s neither statute depends upon the other's enactment for its existence, the repeal of the provision in one enactment does not affect its operation in the other statute.

Id. at 850 (emphasis added) (internal citations omitted). By analogy, § 1014 is its own '*separate distinct legislative enactment*' at the federal level and as adopted under Idaho Code § 63-3004. The Public Law Election is simply Congress' '*appointed sphere of action*,' having nothing to do with the operation of § 1014's basis rules as adopted into Idaho law.

Even in the context of the basis step-up at death, contrasts between federal and state law are far from unprecedented. California, which as discussed above explicitly incorporates off-code provisions into its tax regime and does not impose a state estate tax, created a special basis statute in response to EGTRRA's passage and the enactment of § 1022, granting estates a stepped-up basis in the decedents' assets for state income tax purposes and expressly disregarding the carryover basis rules of § 1022. Cal. Rev. & Tax. Code §18036.6. Similarly, the Hawaii Department of Revenue recognized that its income tax act did not adopt a state level carryover basis election even though the Hawaii regime is based on the Internal Revenue Code and the Public Law Election applied to Hawaii taxpayers at the federal level. State of Hawaii, Department of Taxation Announcement No. 2011-21, July 19, 2011. In both instances disparities of tax basis at the federal and state level happily coexist.

H. In Issuing Its Decision, the Commission Erroneously Misconstrued and Improperly Expanded the Idaho Act's Declaration of Intent.

As indicated above, the Idaho Legislature has enacted no legislation (and Idaho courts have rendered no case law) incorporating off-code provisions of federal law into the Idaho Act or any other Idaho statute. Therefore, in an attempt to rationalize its Decision, the Commission relied heavily on the "Declaration of Intent" of Idaho Code § 63-3002, which states:

> It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act ***identical to the provisions of the Federal Internal Revenue Code*** relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, ***subject only to modifications contained in the Idaho law*** . . . .

(Emphasis added). The Declaration of Intent does not support the Commission's position for two reasons.

First, Idaho Code § 63-3002 specifically indicates that the general goal of having taxpayers report the same amount of taxable income to both the Internal Revenue Service and the Commission is trumped by "modifications contained in the Idaho law." Consistent therewith, the Idaho Supreme Court has refused to adopt federal provisions for equitable relief, which are not specifically addressed in Idaho Code § 63-3002 and which were held to conflict with other Idaho laws. *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 848-49 (2010). Likewise, the Idaho Supreme Court rejected the application of the accounting method of § 460 to Idaho law under Idaho Code § 63-3002, citing conflicts with the apportionment formula of Idaho Code § 63-3027. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 796-97 (2006). By not incorporating the repealed § 1022 and the off-code Public Law Election into the Idaho Act, Idaho law requires the Estate to report different amounts of taxable income to the Commission and to the Internal Revenue Service. As discussed above, that "modification contained in Idaho law" is unambiguous based on the plain and ordinary meaning of "the Internal Revenue Code of 1986" as incorporated into the Idaho Act. Accordingly, the intent

language of Idaho Code § 63-3002 cannot be construed to trump the clear language of the Idaho Act that requires the Estate to calculate its taxable income pursuant to the Internal Revenue Code of 1986 but not pursuant to repealed § 1022 or the off-code Public Law Election.

Second, the stated purpose of legislation cannot modify the plain and unambiguous meaning of the statutes that comprise the legislation. Here, the text of Idaho Code § 63-3002 indicates that the Idaho Legislature's purpose in making the Idaho Act identical to the Internal Revenue Code of 1986 is to make equal, subject to modifications contained in Idaho law, the amount of taxable income taxpayers report each year to the Internal Revenue Service and the Commission. In other words, the Idaho Legislature used the tool of incorporating the Internal Revenue Code of 1986 into the Idaho Act to achieve the purpose of requiring taxpayers to report the same amount of taxable income to both the Internal Revenue Service and the Commission. In this case, that tool fails to achieve that purpose because the Idaho Legislature did not also incorporate repealed § 1022 or the off-code Public Law Election into the Idaho Act. Even if it is assumed that such failure was not intentional, neither the Commission nor this Court is entitled to ignore the plain and unambiguous provisions of the Idaho Act by incorporating repealed § 1022 and the off-code Public Law Election into the Idaho Act. For example, the Idaho Supreme Court has ruled "The asserted purpose for enacting legislation cannot modify its plain meaning." *Viking Constr., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 191 (2010) *abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011). The Idaho Supreme Court has also stated that "when the language of a statute is definite, courts must give effect to that meaning whether or not the legislature anticipated the statute's result." *In re Permit No. 36-7200 in Name of Idaho Dept. of Parks and Recreation*, 121 Idaho 819, 824 (1992) *abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011). Accordingly, neither the Commission nor this Court may ignore the plain language of the Idaho Act, even if it believes the plain language of the Idaho Act produces a result different than the result that may have been intended by the Idaho Legislature.

I. Incorporating the Public Law Election Into the Idaho Act Would Amount to an Unconstitutional Amendatory Reference.

Even if the Idaho Legislature had intended for the Idaho Act's reference to the "Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012" to serve the dual purpose (x) of incorporating as part of the Idaho Act Title 26 of the United States Code, and (y) subsequently amending Title 26 statutes to include the Public Law Election, that purported amendment of Title 26, as incorporated into the Idaho Act, would be an impermissible amendatory reference that is void under the Idaho Constitution.

Article III, § 18 of the Idaho Constitution provides: "No act shall be revised or amended by mere reference to its title, but ***the section as amended shall be set forth and published at full length***." (Emphasis added). This is a constitutional prohibition on "amendatory references," which "amend or revise the legislation to which [they] refer." *See* F. Scott Boyd, *Looking Glass Law: Legislation by Reference in the States*, 68 LA. L. REV. 1201, 1206 n.19 (2008) (citing constitutional provisions in thirty-one states, including Idaho Const. Art. III, § 18). Amendatory references are disfavored "as making interpretation of enacted statutes and their relationship to one another ***impossibly complex***, allowing unscrupulous legislators to covertly amend laws, and generally ***permitting legislation to be enacted without proper deliberation***." *Id.* at 1207 (emphasis added). The purpose behind this constitutional enactment is frequently summarized as follows:

> The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purports only to insert certain words, or to substitute one phrase for another in an act or section, which was only referred to, but not published, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation. But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent.

Noble v. Bragaw, 85 P. 903, 906 (Idaho 1906) (quoting *People v. Mahaney*, 13 Mich. 481, 496-97 (1865).

As the above quote suggests, incorporation of a body of law by reference is not an unconstitutional amendatory reference. *Accord State v. Vanoli*, 86 Wash. App. 643 (1997). In the matter at hand, the Idaho Act's incorporation of the Internal Revenue Code of 1986 by reference was constitutional. The same cannot be said if the text of § 301(c)(3) of TRUIRJCA is employed for the purpose of amending the Internal Revenue Code statutes, *as adopted into the Idaho Act.*

By setting forth the Public Law Election, § 301(c)(3) materially changes the content of §§ 1014, 1022, and 2210 by allowing a taxpayer to choose estate tax and basis consequences that are not available in the text of those Internal Revenue Code sections. Although it is confusing and cumbersome, amending federal tax law in this manner is permissible under the U.S. Constitution, (which does not prohibit amendatory reference legislation). Before these changes can be adopted into the Idaho Act, however, they must pass muster under the Idaho Constitution. As one scholar has noted:

> [R]eferenced material takes on this separate existence as part of the adopting document, just as if the words of the referenced material ***had been actually set forth in full*** on the page where it was referenced. Understanding that the new legal requirement exists ***not as any part of the referenced material itself***, but rather as a duplicate or 'clone' of the referenced material that has been created within the adopting legislation makes it much easier to resolve many of the issues that arise.

Boyd, *supra*, at 1221 (emphasis added); *see also Coram v. State*, 996 N.E. 2d 1057, 1083-84 (Ill. 2013) (Burke, J. concurring) (constitutionality of federal firearm statute irrelevant to constitutional analysis of state statute that incorporated the federal statute's language).

Under Idaho law, the TRUIRJCA § 301(c)(3)'s Public Law Election falls squarely within the parameters of an amendatory reference in violation of Idaho Const. Art. III, § 18. Idaho's amendatory reference ban "does not require the whole act containing the section amended to be republished in full; ***it only requires republication of the section which it purports to amend***." *Noble*, 85 P. at 904 (emphasis added). Nonetheless, TRUIRJCA § 301(c)(3) did not even "set forth

and publish at full length" the Internal Revenue Code sections that were altered thereby. Stated differently, neither the U.S. Congress, nor the Idaho Legislature re-published §§ 2210, 1014, and 1022 to reflect the Public Law Election.

Amending the Idaho Act through such means would lead to the same statutory complications and haphazard legislation that Idaho Const. Art. III, § 18 was designed to prevent. *See* Boyd, *supra*, at 1207. Specifically, neither the public nor the Legislature could thoroughly understand the Idaho Act without surveying the Internal Revenue Code of 1986 as well as an assortment of congressional tax acts. Therefore, any attempt to incorporate the Public Law Election (as set forth in TRUIRJCA § 301(c)(3)) into the Idaho Act is void under Idaho Const. Art. III § 18. Since the Public Law Election cannot constitutionally be a part of the Idaho Act, the Estate is entitled to summary judgment establishing its right to a stepped-up basis in Mrs. Stahl's assets.

VII. CONCLUSION

The Commission is required to enforce the Idaho Act as enacted by the Legislature and not as the Commission would have preferred it to be written. No genuine issues of material fact contradict that the plain language of the Idaho Act and the Internal Revenue Code of 1986, federal and state legislative history and intent, sound policy considerations, and state constitutional concerns all favor the Estate's right to a basis in the Chino Ranch stepped-up to its fair market value as of the date of Mrs. Stahl's death. Based on the foregoing, Plaintiff, the Estate of Zippora Stahl, respectfully requests this Court GRANT its Motion for Partial Summary Judgment.

DATED this 26th day of June 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden	X	US Mail
Idaho Attorney General		Overnight Mail
Phil N. Skinner		Hand Delivery
David B. Young		Facsimile No. 208-343-8869
Deputy Attorneys General		Electronic Mail
State of Idaho	X	phil.skinner@tax.idaho.gov
P. O. Box 36	X	david.young@tax.idaho.gov
Boise, ID 83722-0410		
(208) 334-7530		

Deanna Silvers

Deanna Silvers

Nicholas S. Marshall, ISBN 5578
Maximilian Held, ISBN 9062
AHRENS DEANGELI LAW GROUP LLP
250 S. Fifth Street, Suite 660
P.O. Box 9500
Boise, Idaho 83707-9500
Telephone: (208) 639-7799
Facsimile: (208) 639-7788

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. OC15-00106 AFFIDAVIT OF RALPH V. SEEP

CITY OF WASHINGTON)
:ss
DISTRICT OF COLUMBIA)

Affiant, Ralph V. Seep, being sworn, states that:

1. I am the Law Revision Counsel of the U.S. House of Representatives.

2. As part of its functions, as set forth in Chapter 9A of Title 2 of the United

States Code, the Office of the Law Revision Counsel of the U.S. House of Representatives is responsible for preparing and submitting periodically such revisions in the titles of the United States Code which have been enacted into positive law as may be necessary to keep such titles current.

3. Section 301(c), of title III of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312, 124 Stat. 3296 ("Section 301(c)"), did not amend any provision of any positive law title of the United States Code and did not amend the Internal Revenue Code of 1986, Title 26 of the United States Code. ``Section 301(c)'' enacted freestanding provisions that this Office classified as a statutory note under section 2001 of Title 26 of the United States Code. These provisions are not technically part of the Internal Revenue Code of 1986.

DATED: 4/23/2015

Ralph V. Seep

Ralph V. Seep
Office of the Law Revision Counsel
U.S. House of Representatives
H2-308 Ford House Office Building
Washington, DC 20515

SUBSCRIBED AND SWORN to before me this 23rd day of April, 2015.

OSBONNE CNUSA NOTARY PUBLIC EXP. 4-14-2017 DISTRICT OF COLUMBIA

Signature of Notarial Officer
Title (and Rank) Public Notary
My Commission Expires: 04/14/2017

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden	X	US Mail
Idaho Attorney General		Overnight Mail
Phil N. Skinner		Hand Delivery
David B. Young		Facsimile No. 208-343-8869
Deputy Attorneys General		Electronic Mail
State of Idaho	X	phil.skinner@tax.idaho.gov
P. O. Box 36	X	david.young@tax.idaho.gov
Boise, ID 83722-0410		
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Deanna Silvers

Deanna Silvers

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL

DAVID B. YOUNG [ISB # 6380]
PHIL N SKINNER [ISB #8527]
DEPUTY ATTORNEYS GENERAL
STATE OF IDAHO
P. O. BOX 36
BOISE, ID 83722-0410
FACSIMILE: (208) 334-7530

Attorneys for the Idaho State Tax Commission

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC1500106 **MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Respondent Idaho State Tax Commission, by and through its attorney of record, David B. Young, Deputy Attorney General, and respectfully moves for summary judgment pursuant to I.R.C.P. 56(b), denying Appellant its requested relief, and upholding the decision of the Commission. This motion is supported by its Memorandum as well as the Joint Stipulation of Facts filed herein.

DATED this 26 day of June 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of June 2015, I caused to be served a true and correct copy of the within and foregoing Tax Commission's MOTION FOR SUMMARY JUDGMENT upon Petitioner indicated below:

NICHOLAS S MARSHALL	_____ U.S. Mail, Postage Prepaid
MAXIMILIAN HELD	_____ Hand Delivered
AHRENS DEANGELI LAW GROUP LLP	_____ Overnight Mail
PO BOX 9500	_X_ Telecopy: (208) 639-7788
BOISE ID 83707-9500	_____ Email

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL

DAVID B. YOUNG [ISB # 6380]
PHIL N SKINNER [ISB #8527]
DEPUTY ATTORNEYS GENERAL
STATE OF IDAHO
P. O. BOX 36
BOISE, ID 83722-0410
(208) 334-7530

Attorneys for the Idaho State Tax Commission

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC1500106 **JOINT STIPULATION OF FACTS**

COME NOW, Idaho State Tax Commission and Estate of Zippora Stahl, by and through their respective counsel, pursuant to Rules 6(e)(3) and 56(c), Idaho Rules of Civil Procedure, and hereby stipulate and agree to the following in relation to the cross motions for summary judgment:

STIPULATION OF FACTS

1. Kathleen Krucker is the personal representative (Personal Representative) of the Estate of Zippora Stahl (Stahl), an Idaho resident who died in 2010.

ORIGINAL

2. At the time of her death, Stahl held substantially appreciated real property located in Chino, California (Chino property).

3. The Personal Representative pursued the sale of the Chino property and that sale was authorized, approved, and accounted for in an ancillary probate proceeding in California. In that proceeding, the value of the Chino property was determined to be $16,000,000 at the time of Stahl's death.

4. The Personal Representative sold the Chino property in December 2012 for $16,318,909.

5. On the federal 2012 income tax return prepared by the Estate's accountants, the Personal Representative calculated the Estate's Federal Income Tax pursuant to § 301(c) of Public Law 111-312. This federal election allowed the Estate to elect to use a modified carryover basis for the assets owned by Stahl at her death for Federal Income Tax Purposes in exchange for not having to pay the Federal Estate Tax. The basis used was $1,457,341. The total sales price ($16,339,000) less the basis ($1,457,341) resulted in taxable gain in the amount of $14,881,659. This resulted in a total tax of $1,029,107. *See*, Exhibit "A" (Idaho Form 66, Schedule D (Capital Gains and Losses), Federal 2012 Form 1041) (attached hereto).

6. On the 2012 Idaho income tax return prepared by the Estate's accountants, the Personal Representative used the same modified carryover basis for the appreciated property as was used on the Estate's federal tax return.

7. The Idaho State Tax Commission (Tax Commission) processed the Estate's Idaho 2012 income tax return. The Tax Commission concluded that the Personal Representative had incorrectly computed a credit for taxes paid to other states. Accordingly, the Tax Commission

adjusted that credit and issued its Notice of Deficiency Determination (NODD) in July 2013, in the amount of $20,629 for the taxable year 2012.

8. The Personal Representative protested the NODD and included an amended Idaho 2012 income tax return, claiming a refund in the amount of $1,026,435. The amended Idaho return computed the gain from the sale of the California property to reflect an Idaho stepped-up basis, which resulted in significantly less reportable Idaho gain. This basis is different from the calculation of the basis in the original Federal and Idaho returns. The stepped-up basis used in the amended return was $16,000,000. The total sales price ($16,318,909) less the basis ($16,000,000) resulted in taxable gain in the amount of $318,909. This would result in a total Idaho income tax of $2,672. *See*, Exhibit "B" (Amended Idaho Form 66, Recomputed Schedule D (Capital Gains and Losses), Federal 2012 Form 1041) (attached hereto).

9. The Tax Commission issued a second NODD in November 2013, denying the refund claimed on the amended return. In its Decision from October 2014, the Tax Commission upheld the assessment of the $20,629 tax, as well as the denial of the refund claim. The Estate has now paid the required percentage of its contested tax liability in order to pursue this appeal to the District Court.

STIPULATION RE: VALUATION

1. If the Estate prevails on summary judgment on the major legal issues, there will be one factual issue yet to be resolved. If the Estate prevails, the applicable provisions of the Internal Revenue Code would require the Estate's income tax basis in the Chino property to be equal to the fair market value of the Chino property on the date of Stahl's death. The factual issue yet to be resolved will be: the fair market value of the Chino property on the date of Stahl's

death. The parties agree to work together to establish an agreed-upon fair market value of the Chino property at the time of death, if needed.

2. If the Tax Commission prevails on summary judgment, there will be no remaining issues as to any material fact, and a complete summary judgment may issue.

DATED this 24 day of June 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

DATED this 26th day of June 2015.

AHRENS DEANGELI LAW GROUP LLP

NICHOLAS S. MARSHALL, of the Firm
COUNSEL FOR PETITIONER

356373007 99128787 264 2013105 042513

FORM 66 EFC00036 07-25-12

IDAHO FIDUCIARY INCOME TAX RETURN

1032

2012

AMENDED RETURN, check the box. ▪ ☐ See instructions, page 5 for the reasons for amending and enter the number. ____

For calendar year 2012, or fiscal year beginning Month Day Year 12 ending Month Day Year

State use only: STAH

Name of estate or trust: ZIPPORA STAHL ESTATE

State use only: STAH

Federal employer identification number: 27-6756432

Name and title of fiduciary: KATHLEEN KRUCKER PERSONAL REPRESENTATIVE

Address of fiduciary (number and street): 381 BOB BARTON RD

City, State and Zip Code: JEROME, ID 83338

Check all that apply: ▪ ☒ Resident Return ▪ ☐ Grantor Trust ▪ ☐ Electing Small Business Trust ▪ ☐ Qualified Funeral Trust (QFT) ▪ ☐ The trust or estate included Idaho Form PTE-12 with this return. ▪ ☐ Composite Return

1 If reporting for an estate:
a Decedent's social security number [redacted] b Enter the decedent's date of death .. 6/27/2010
c Was the decedent a resident of Idaho? ☒ Yes ▪ ☐ No
d If no, indicate the state of residence ____

2 Does this estate or trust have any nonresident beneficiaries? ☐ Yes ▪ ☒ No

3 Is this a final return? ☐ Yes ▪ ☒ No

4	Idaho adjusted income. Enter the amount from Schedule B, page 2, line 11	4	14,872,219.
5	Income distribution deduction to beneficiaries	5	
6	Estate tax deduction	6	
7	Subtract lines 5 and 6 from line 4	7	14,872,219.
8	Exemption. See instructions	8	600.
9	Idaho taxable income. Subtract line 8 from line 7	9	14,871,619.
10	Idaho income tax. Use the Tax Computation Schedule, see instructions, page 10	10	1,100,262.
11	Donation to Opportunity Scholarship Program	11	
12	Credits. Enter the amount from Schedule C, page 2, line 6. See instructions	12	71,165.
13	Add lines 10 and 11 and subtract line 12. If less than zero, enter zero	13	1,029,097.
14	Income distribution reportable by beneficiaries. See instructions	14	
15	Tax on income distribution. Multiply line 14 by 7.4% ▪ less credits ▪	15	0.
16	Permanent building fund tax. See instructions. Enter zero if this is a QFT	16	10.
17	Total tax from recapture of income tax credits from Form 44, Part II, line 7. Include Form 44	17	
18	Fuels tax due. Include Form 75	18	
19	**Sales/Use tax due on Internet, mail order, and other nontaxed purchases**	19	
20	Tax from recapture of qualified investment exemption. Include Form 49ER	20	
21	Tax on Electing Small Business Trust or QFT composite return. See instructions	21	
22	Total tax. Add lines 13 and 15 through 21	22	1,029,107.
23	Estimated tax payments	23	
24	Idaho income tax withheld. Include Form(s) W-2	24	
25	Special fuels tax refund ____ Gasoline tax refund ____ Include Form 75	25	
26	Hire One Act credit. Include Form 72	26	0
27	Total payments and other credits. Add lines 23 through 26	27	

REFUND or PAYMENT DUE If line 22 is more than line 27, go to line 28. If line 22 is less than line 27, go to line 31.

28	Tax due. Subtract line 27 from line 22	28	1,029,107.
29	Penalty ▪ ____ Interest from due date ▪ ____ Enter total	29	
30	TOTAL DUE. Add line 28 and line 29	▪	1,029,107.
31	Overpayment. Subtract line 22 from line 27	▪ 31	
32	REFUND. Amount of line 31 you want refunded to you	▪	
33	ESTIMATED TAX. Amount you want credited to your 2013 estimated tax. Subtract line 32 from line 31	▪ 33	

RECEIVED IDAHO TAX COMM APR 15 2013 CLERK NO. 4

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Schedule A – Computation of the federal taxable income of the estate or trust derived from Idaho sources.

To be completed by all nonresident and part-year resident estates or trusts.

1	Total income from federal Form 1041, line 9		1	
2	Income derived from Idaho sources. Include a schedule	2		
3	Idaho capital gain or (loss). Include a schedule	3		
4	Add lines 2 and 3		4	
5	Percent of total federal income derived from Idaho sources. Divide line 4 by line 1		5	%
6	Deductions from federal Form 1041 not allocable to any specific income		6	
7	Prorated deductions. Multiply line 6 by line 5		7	
8	Federal taxable income derived from Idaho sources. Subtract line 7 from line 4. Enter here and on Schedule B, line 1		8	

Schedule B – Idaho Adjusted Income

1	Adjusted total income or (loss). Federal Form 1041, line 17 or Schedule A, line 8 if nonresident	1	14,772,209.
2	Interest and dividends not taxable under Internal Revenue Code. Include a schedule	2	
3	State, municipal and local income taxes deducted on federal return	3	100,010.
4	Net operating loss deducted on federal return	4	8,247.
5	Addition for bonus depreciation. Include computations	5	
6	Other additions. Include a schedule	6	
7	Idaho net operating loss carryover ▪ 8,247. carryback ▪ _____ Enter total	7	8,247.
8	Income exempt from Idaho tax. Include a schedule	8	
9	Subtraction for bonus depreciation. Include computations	9	
10	Other subtractions. Include a schedule	10	
11	Idaho adjusted income. Add lines 1 through 6 and subtract lines 7 through 10. Enter here and on line 4, page 1	11	14,872,219.

Schedule C – Credits

1 Did you claim the qualified investment exemption for investment tax credit property acquired this tax year? ☐ Yes ▪ ☒ No

2 Credit for income tax paid to other states – Nonresidents cannot claim this credit.

a	Idaho income tax, line 10, page 1	2a	1,100,262.	
b	Total income from federal Form 1041, line 9	2b	14,931,223.	
c	Enter the portion of line b derived from sources in and taxed by the other state ▪	2c	14,887,850.	
d	Divide line c by line b. Enter percentage here	2d	99.71 %	
e	Multiply line a by line d	2e	1,097,071.	
f	Other state's tax due less its income tax credits ▪	2f	71,165.	
g	Credit for income tax paid to other states. Enter the smaller of line e or line f. A copy of the other state's return MUST accompany this return ▪	2g		71,165.
3	Credit for contributions to Idaho educational entities ▪	3		
4	Credit for contributions to Idaho youth and rehabilitation facilities ▪	4		
5	Total business income tax credits from Form 44, Part I, line 12. Include Form 44	5		
6	Total credits. Add lines 2g through 5. Enter total here and on line 12, page 1	6		71,165.

▪ ☒ Within 180 days of receiving this return, the Idaho State Tax Commission may discuss this return with the paid preparer identified below.

Under penalties of perjury, I declare that to the best of my knowledge and belief this return is true, correct and complete.

SIGN HERE	Signature of fiduciary ▪		Paid preparer's signature ▪ GARY B. GENSKE, CPA	Preparer's EIN, SSN or PTIN ▪ P00020720
	Date	Phone number	Address and phone number	Genske, Mulder & Co., LLP 1835 Newport Blvd, Ste. D263 Costa Mesa, CA 92627
		208-324-7904	95-3623488	(949) 650-9580

MAIL TO: Idaho State Tax Commission, P.O. Box 56, Boise, ID 83756-0056
INCLUDE A COMPLETE COPY OF YOUR FEDERAL FORM 1041.

Department of the Treasury — Internal Revenue Service

Form 1041 U.S. Income Tax Return for Estates and Trusts

► Information about Form 1041 and its separate instructions is at *www.irs.gov/form1041.*

2012 OMB No. 1545-0092

A Check all that apply:
- [X] Decedent's estate
- [ ] Simple trust
- [ ] Complex trust
- [ ] Qualified disability trust
- [ ] ESBT (S portion only)
- [ ] Grantor type trust
- [ ] Bankruptcy estate — Chapter 7
- [ ] Bankruptcy estate — Chapter 11
- [ ] Pooled income fund

For calendar year 2012 or fiscal year beginning , 2012 and ending ,

ZIPPORA STAHL ESTATE
KATHLEEN KRUCKER
PERSONAL REPRESENTATIVE
381 BOB BARTON RD
JEROME, ID 83338

C Employer identification number: 27-6756432

D Date entity created: 6/27/2010

E Nonexempt charitable and split-interest trusts, check applicable box(es), see instr:
- [ ] Described in section 4947(a)(1). Check here if not a private foundation... ► [ ]
- [ ] Described in section 4947(a)(2)

B Number of Schs K-1 attached (see instructions)... ►

F Check applicable boxes: [ ] Initial return [ ] Final return [ ] Amended return [ ] Change in trust's name [ ] Change in fiduciary [ ] Change in fiduciary's name [ ] Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election..... ► [ ]

Income	1	Interest income ..... See Statement 1	1	24,030.
	2a	Total ordinary dividends	2a	
		b Qualified dividends allocable to: (1) Beneficiaries _____ (2) Estate/trust _____		
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	3	
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4	14,881,659.
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	25,534.
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6	
	7	Ordinary gain or (loss). Attach Form 4797	7	
	8	Other income. List type and amount _____	8	
	9	Total income. Combine lines 1, 2a, and 3 through 8 ►	9	14,931,223.
Deductions	10	Interest. Check if Form 4952 is attached ► [ ]	10	
	11	Taxes ..... See Statement 2	11	100,010.
	12	Fiduciary fees	12	
	13	Charitable deduction (from Schedule A, line 7)	13	
	14	Attorney, accountant, and return preparer fees	14	49,843.
	15a	Other deductions not subject to the 2% floor (attach schedule)... See Statement 3	15a	9,161.
		b Allowable miscellaneous itemized deductions subject to the 2% floor	15b	
	16	Add lines 10 through 15b ►	16	159,014.
	17	Adjusted total income or (loss). Subtract line 16 from line 9 ..... 17 14,772,209.		
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18	
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19	
	20	Exemption	20	600.
	21	Add lines 18 through 20 ►	21	600.
Tax and Payments	22	Taxable income. Subtract line 21 from line 17. If a loss, see instructions	22	14,771,609.
	23	Total tax (from Schedule G, line 7)	23	2,230,473.
	24	Payments: a 2012 estimated tax payments and amount applied from 2011 return	24a	2,230,000.
		b Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b	
		c Subtract line 24b from line 24a	24c	2,230,000.
		d Tax paid with Form 7004 (see instructions)	24d	
		e Federal income tax withheld. If any is from Form(s) 1099, check ► [ ]	24e	
		Other payments: f Form 2439 _____; g Form 4136 _____; Total ►	24h	
	25	Total payments. Add lines 24c through 24e, and 24h ►	25	2,230,000.
	26	Estimated tax penalty (see instructions)	26	
	27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27	473.
	28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28	
	29	Amount of line 28 to be: a Credited to 2013 estimated tax ► ; b Refunded ►	29	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► _____ | _____ | ►
Signature of fiduciary or officer representing fiduciary | Date | EIN of fiduciary if a financial institution

May the IRS discuss this return with the preparer shown below (see instrs)? [X] Yes [ ] No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [ ] if self-employed	PTIN
GARY B. GENSKE, CPA	GARY B. GENSKE, CPA	4/09/13		P00020720

Firm's name ► Genske, Mulder & Co., LLP — Firm's EIN ► 95-3623488

Firm's address ► 1835 Newport Blvd, Ste. D263, Costa Mesa, CA 92627 — Phone no. (949) 650-9580

Schedule A Charitable Deduction. Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see instructions)	1	
2	Tax-exempt income allocable to charitable contributions (see instructions)	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see instructions)	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction

1	Adjusted total income (see instructions)	1	
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 15, column (1) (see instructions)	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1 (see instructions)	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7	
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law. 8		
9	Income required to be distributed currently	9	
10	Other amounts paid, credited, or otherwise required to be distributed	10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	

Schedule G Tax Computation (see instructions)

1	Tax: a Tax on taxable income (see instructions)	1a	2,215,381.		
	b Tax on lump-sum distributions. Attach Form 4972	1b			
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c	15,092.		
	d Total. Add lines 1a through 1c			1d	2,230,473.
2a	Foreign tax credit. Attach Form 1116	2a			
	b General business credit. Attach Form 3800	2b			
	c Credit for prior year minimum tax. Attach Form 8801	2c			
	d Bond credits. Attach Form 8912	2d			
3	Total credits. Add lines 2a through 2d			3	0.
4	Subtract line 3 from line 1d. If zero or less, enter -0-			4	2,230,473.
5	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611			5	
6	Household employment taxes. Attach Schedule H (Form 1040)			6	
7	Total tax. Add lines 4 through 6. Enter here and on page 1, line 23			7	2,230,473.

	Other Information	Yes	No
1	Did the estate or trust receive tax-exempt income? If 'Yes,' attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends. ► $		X
2	Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3	At any time during the calendar year 2012, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If 'Yes,' enter the name of the foreign country ►		X
4	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If 'Yes,' the estate or trust may have to file Form 3520. See instructions		X
5	Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If 'Yes,' see instructions for required attachment		X
6	If this is an estate or a complex trust making the section 663(b) election, check here (see instructions) ► ☐		
7	To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see instructions) ► ☐		
8	If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here ► ☒	St 4	
9	Are any present or future trust beneficiaries skip persons? See instructions		X

SCHEDULE I
(Form 1041)
Department of the Treasury
Internal Revenue Service

Alternative Minimum Tax – Estates and Trusts

► Attach to Form 1041.
► Information about Schedule I (Form 1041) and its separate instructions is at *www.irs.gov/form1041.*

OMB No. 1545-0092

2012

Name of estate or trust: ZIPPORA STAHL ESTATE

Employer identification number: 27-6756432

Part I Estate's or Trust's Share of Alternative Minimum Taxable Income

1	Adjusted total income or (loss) (from Form 1041, line 17)	1	14,772,209.
2	Interest	2	
3	Taxes	3	100,010.
4	Miscellaneous itemized deductions (from Form 1041, line 15b)	4	
5	Refund of taxes	5	
6	Depletion (difference between regular tax and AMT)	6	
7	Net operating loss deduction. Enter as a positive amount	7	8,247.
8	Interest from specified private activity bonds exempt from the regular tax	8	
9	Qualified small business stock (see instructions)	9	
10	Exercise of incentive stock options (excess of AMT income over regular tax income)	10	
11	Other estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	11	
12	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	12	
13	Disposition of property (difference between AMT and regular tax gain or loss)	13	
14	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	14	
15	Passive activities (difference between AMT and regular tax income or loss)	15	
16	Loss limitations (difference between AMT and regular tax income or loss)	16	
17	Circulation costs (difference between regular tax and AMT)	17	
18	Long-term contracts (difference between AMT and regular tax income)	18	
19	Mining costs (difference between regular tax and AMT)	19	
20	Research and experimental costs (difference between regular tax and AMT)	20	
21	Income from certain installment sales before January 1, 1987	21	
22	Intangible drilling costs preference	22	
23	Other adjustments, including income-based related adjustments	23	
24	Alternative tax net operating loss deduction (See the instructions for the limitation that applies.)	24	-8,247.
25	Adjusted alternative minimum taxable income. Combine lines 1 through 24	25	14,872,219.
	Note: *Complete Part II below before going to line 26.*		
26	Income distribution deduction from Part II, line 44 — 26		
27	Estate tax deduction (from Form 1041, line 19) — 27		
28	Add lines 26 and 27	28	
29	Estate's or trust's share of alternative minimum taxable income. Subtract line 28 from line 25	29	14,872,219.

If line 29 is:

- $22,500 or less, stop here and enter -0- on Form 1041, Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
- Over $22,500, but less than $165,000, go to line 45.
- $165,000 or more, enter the amount from line 29 on line 51 and go to line 52.

Part II Income Distribution Deduction on a Minimum Tax Basis

30	Adjusted alternative minimum taxable income (see instructions)	30	
31	Adjusted tax-exempt interest (other than amounts included on line 8)	31	
32	Total net gain from Schedule D (Form 1041), line 15, column (1). If a loss, enter -0-	32	
33	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Form 1041, Schedule A, line 4)	33	
34	Capital gains paid or permanently set aside for charitable purposes from gross income (see instructions)	34	
35	Capital gains computed on a minimum tax basis included on line 25	35	
36	Capital losses computed on a minimum tax basis included on line 25. Enter as a positive amount	36	
37	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 30 through 36. If zero or less, enter -0-	37	
38	Income required to be distributed currently (from Form 1041, Schedule B, line 9)	38	
39	Other amounts paid, credited, or otherwise required to be distributed (from Form 1041, Schedule B, line 10)	39	
40	Total distributions. Add lines 38 and 39	40	
41	Tax-exempt income included on line 40 (other than amounts included on line 8)	41	
42	Tentative income distribution deduction on a minimum tax basis. Subtract line 41 from line 40	42	

Part II Income Distribution Deduction on a Minimum Tax Basis *(continued)*

43	Tentative income distribution deduction on a minimum tax basis. Subtract line 31 from line 37. If zero or less, enter -0-			43	
44	**Income distribution deduction on a minimum tax basis.** Enter the smaller of line 42 or line 43. Enter here and on line 26			44	

Part III Alternative Minimum Tax

45	Exemption amount			45	$22,500.
46	Enter the amount from line 29	46			
47	Phase-out of exemption amount	47	$75,000.		
48	Subtract line 47 from line 46. If zero or less, enter -0-	48	0.		
49	Multiply line 48 by 25% (.25)			49	
50	Subtract line 49 from line 45. If zero or less, enter -0-			50	0.
51	Subtract line 50 from line 46			51	14,872,219.
52	Go to Part IV of Schedule I to figure line 52 if the estate or trust has qualified dividends or has a gain on lines 14a and 15 of column (2) of Schedule D (Form 1041) (as refigured for the AMT, if necessary). Otherwise, if line 51 is — • $175,000 or less, multiply line 51 by 26% (.26). • Over $175,000, multiply line 51 by 28% (.28) and subtract $3,500 from the result			52	2,230,473.
53	Alternative minimum foreign tax credit (see instructions)			53	
54	Tentative minimum tax. Subtract line 53 from line 52			54	2,230,473.
55	Enter the tax from Form 1041, Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)			55	2,215,381.
56	**Alternative minimum tax.** Subtract line 55 from line 54. If zero or less, enter -0-. Enter here and on Form 1041, Schedule G, line 1c			56	15,092.

Part IV Line 52 Computation Using Maximum Capital Gains Rates

Caution: *If you did not complete Part V of Schedule D (Form 1041), the Schedule D Tax Worksheet, or the Qualified Dividends Tax Worksheet, see the instructions before completing this part.*

57	Enter the amount from line 51			57	14,872,219.
58	Enter the amount from Schedule D (Form 1041), line 22, line 13 of the Schedule D Tax Worksheet, or line 4 of the Qualified Dividends Tax Worksheet, whichever applies (as refigured for the AMT, if necessary)	58	14,881,659.		
59	Enter the amount from Schedule D (Form 1041), line 14b, column (2) (as refigured for the AMT, if necessary). If you did not complete Schedule D for the regular tax or the AMT, enter -0-	59	0.		
60	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 58. Otherwise, add lines 58 and 59 and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary)	60	14,881,659.		
61	Enter the smaller of line 57 or line 60			61	14,872,219.
62	Subtract line 61 from line 57			62	
63	If line 62 is $175,000 or less, multiply line 62 by 26% (.26). Otherwise, multiply line 62 by 28% (.28) and subtract $3,500 from the result			63	
64	Maximum amount subject to the 0% rate	64	$2,400.		
65	Enter the amount from line 23 of Schedule D (Form 1041), line 14 of the Schedule D Tax Worksheet, or line 5 of the Qualified Dividends Tax Worksheet in the Instructions for Form 1041, whichever applies (as figured for the regular tax). If you did not complete Schedule D or either worksheet for the regular tax, enter -0-	65			
66	Subtract line 65 from line 64. If zero or less, enter -0-	66	2,400.		
67	Enter the smaller of line 57 or line 58	67	14,872,219.		
68	Enter the smaller of line 66 or line 67	68	2,400.		
69	Subtract line 68 from line 67	69	14,869,819.		
70	Multiply line 69 by 15% (.15)			70	2,230,473.
	If line 59 is zero or blank, skip lines 71 and 72 and go to line 73. Otherwise, go to line 71.				
71	Subtract line 67 from line 61	71			
72	Multiply line 71 by 25% (.25)			72	
73	Add lines 63, 70, and 72			73	2,230,473.
74	If line 57 is $175,000 or less, multiply line 57 by 26% (.26). Otherwise, multiply line 57 by 28% (.28) and subtract $3,500 from the result			74	4,160,721.
75	Enter the smaller of line 73 or line 74 here and on line 52			75	2,230,473.

SCHEDULE D (Form 1041)

Department of the Treasury Internal Revenue Service

Capital Gains and Losses

► Attach to Form 1041, Form 5227, or Form 990-T.

► Information about Schedule D (Form 1041) and its separate instructions is at *www.irs.gov/form1041.*

OMB No. 1545-0092

2012

Name of estate or trust: ZIPPORA STAHL ESTATE

Employer identification number: 27-6756432

Note: *Form 5227 filers need to complete only Parts I and II.*

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

1a (a) Description of property (Example: 100 shares 7% preferred of 'Z' Co)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)
685000 BANK OF BARODA	11/09/11	8/22/12	685,000.	685,000.	0.
750000 BANK OF CHINA NEW YORK CITY NY FDIC INSU	10/13/11	4/19/12	750,000.	750,000.	0.
750000 GE CAPITAL RETAIL BK CO	10/13/11	5/21/12	750,000.	750,000.	0.

b Enter the short-term gain or (loss), if any, from Schedule D-1, line 1b	1b	
2 Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824	2	
3 Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts	3	
4 Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 2011 Capital Loss Carryover Worksheet	4	
5 **Net short-term gain or (loss).** Combine lines 1a through 4 in column (f). Enter here and on line 13, column (3) on page 2 ►	5	

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

6a (a) Description of property (Example: 100 shares 7% preferred of 'Z' Co)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)
121.87 ACRES 50% INTEREST IN CHINO LAND		12/21/12	16,339,000.	1,457,341.	14,881,659.
750000 COMPASS BK CD BIRMINGHAM AL	10/13/11	10/19/12	750,000.	750,000.	0.

b Enter the long-term gain or (loss), if any, from Schedule D-1, line 6b	6b	
7 Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824	7	
8 Net long-term gain or (loss) from partnerships, S corporations, and other estates or trusts	8	
9 Capital gain distributions	9	
10 Gain from Form 4797, Part I	10	
11 Long-term capital loss carryover. Enter the amount, if any, from line 14 of the 2011 Capital Loss Carryover Worksheet	11	
12 **Net long-term gain or (loss).** Combine lines 6a through 11 in column (f). Enter here and on line 14a, column (3) on page 2 ►	12	14,881,659.

Part III Summary of Parts I and II Caution: *Read the instructions before completing this part.*		(1) Beneficiaries' (see instructions)	(2) Estate's or trust's	(3) Total
13 Net short-term gain or (loss)	13			
14 Net long-term gain or (loss):				
a Total for year	14a		14,881,659.	14,881,659.
b Unrecaptured section 1250 gain (see line 18 of the worksheet)	14b			
c 28% rate gain	14c			
15 Total net gain or (loss). Combine lines 13 and 14a ►	15		14,881,659.	14,881,659.

Note: *If line 15, column (3), is a net gain, enter the gain on Form 1041, line 4 (or Form 990-T, Part I, line 4a). If lines 14a and 15, column (2), are net gains, go to Part V, and do not complete Part IV. If line 15, column (3), is a net loss, complete Part IV and the Capital Loss Carryover Worksheet, as necessary.*

Part IV Capital Loss Limitation

16 Enter here and enter as a (loss) on Form 1041, line 4 (or Form 990-T, Part I, line 4c, if a trust), the smaller of: a The loss on line 15, column (3) or b $3,000	16	

Note: *If the loss on line 15, column (3), is more than $3,000, or if Form 1041, page 1, line 22 (or Form 990-T, line 34), is a loss, complete the Capital Loss Carryover Worksheet in the instructions to figure your capital loss carryover.*

Part V Tax Computation Using Maximum Capital Gains Rates

Form 1041 filers. Complete this part only if both lines 14a and 15 in column (2) are gains, or an amount is entered in Part I or Part II and there is an entry on Form 1041, line 2b(2), and Form 1041, line 22, is more than zero.

Caution: *Skip this part and complete the Schedule D Tax Worksheet in the instructions if:*

- *Either line 14b, column (2) or line 14c, column (2) is more than zero, or*
- *Both Form 1041, line 2b(1), and Form 4952, line 4g are more than zero.*

Form 990-T trusts. Complete this part only if both lines 14a and 15 are gains, or qualified dividends are included in income in Part I of Form 990-T, and Form 990-T, line 34 is more than zero. Skip this part and complete the Schedule D Tax Worksheet in the instructions if either line 14b, column (2) or line 14c, column (2) is more than zero.

17 Enter taxable income from Form 1041, line 22 (or Form 990-T, line 34)			17	14,771,609.		
18 Enter the smaller of line 14a or 15 in column (2) but not less than zero	18	14,881,659.				
19 Enter the estate's or trust's qualified dividends from Form 1041, line 2b(2) (or enter the qualified dividends included in income in Part I of Form 990-T)	19					
20 Add lines 18 and 19	20	14,881,659.				
21 If the estate or trust is filing Form 4952, enter the amount from line 4g; otherwise, enter -0- ►	21	0.				
22 Subtract line 21 from line 20. If zero or less, enter -0-			22	14,881,659.		
23 Subtract line 22 from line 17. If zero or less, enter -0-			23	0.		
24 Enter the smaller of the amount on line 17 or $2,400			24	2,400.		
25 Is the amount on line 23 equal to or more than the amount on line 24? ☐ Yes. Skip lines 25 and 26; go to line 27 and check the 'No' box. ☒ No. Enter the amount from line 23			25	0.		
26 Subtract line 25 from line 24			26	2,400.		
27 Are the amounts on lines 22 and 26 the same? ☐ Yes. Skip lines 27 thru 30; go to line 31. ☒ No. Enter the smaller of line 17 or line 22			27	14,771,609.		
28 Enter the amount from line 26 (If line 26 is blank, enter -0-)			28	2,400.		
29 Subtract line 28 from line 27			29	14,769,209.		
30 Multiply line 29 by 15% (.15)					30	2,215,381.
31 Figure the tax on the amount on line 23. Use the 2012 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)					31	
32 Add lines 30 and 31					32	2,215,381.
33 Figure the tax on the amount on line 17. Use the 2012 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)					33	5,168,997.
34 Tax on all taxable income. Enter the smaller of line 32 or line 33 here and on Form 1041, Schedule G, line 1a (or Form 990-T, line 36)					34	2,215,381.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)

► Attach to Form 1040, 1040NR, or Form 1041.

► Information about Schedule E and its separate instructions is at *www.irs.gov/form1040.*

OMB No. 1545-0074

2012

Attachment Sequence No. 13

Name(s) shown on return

ZIPPORA STAHL ESTATE

[redacted]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2012 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

1a Physical address of each property (street, city, state, ZIP code)

A CHINO, CA

B

C

1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.		Fair Rental Days	Personal Use Days	QJV
A 8		A			
B		B			
C		C			

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Statement 5

Income:	Properties:	A	B	C
3 Rents received	3	19,343.		
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9	3,552.		
10 Legal and other professional fees	10			
11 Management fees	11	1,788.		
12 Mortgage interest paid to banks, etc (see instructions)	12			
13 Other interest	13			
14 Repairs	14	6,471.		
15 Supplies	15			
16 Taxes	16	-19,135.		
17 Utilities	17	1,123.		
18 Depreciation expense or depletion	18			
19 Other (list) ► See Stm 6	19	10.		
20 Total expenses. Add lines 5 through 19	20	-6,191.		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	25,534.		
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22			

23a Total of all amounts reported on line 3 for all rental properties	23a	19,343.	
b Total of all amounts reported on line 4 for all royalty properties	23b		
c Total of all amounts reported on line 12 for all properties	23c		
d Total of all amounts reported on line 18 for all properties	23d		
e Total of all amounts reported on line 20 for all properties	23e	-6,191.	
24 Income. Add positive amounts shown on line 21. Do not include any losses	24		25,534.
25 Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25		
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26		25,534.

Form **8582**

Department of the Treasury Internal Revenue Service (99)

Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at *www.irs.gov/form8582.*

OMB No. 1545-1008

2012

Attachment Sequence No. 88

Name(s) shown on return: ZIPPORA STAHL ESTATE

Identifying number: 27-6756432

Part I 2012 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c		1d	

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b		2c	

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a	25,534.	
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b		
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c		
d	Combine lines 3a, 3b, and 3c		3d	25,534.

4	Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used	4	25,534.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the smaller of the loss on line 1d or the loss on line 4		5	
6	Enter $150,000. If married filing separately, see the instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs)	7	14,746,675.	
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). Do not enter more than $25,000. If married filing separately, see instructions		9	
10	Enter the smaller of line 5 or line 9		10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2012.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

Caution: *The worksheets must be filed with your tax return. Keep a copy for your records.*

Worksheet 1 — For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ►					

Worksheet 2 — For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ►			

Worksheet 3 — For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
RENTAL DAIRY	25,534.			25,534.	
Total. Enter on Form 8582, lines 3a, 3b, and 3c ►	25,534.				

Worksheet 4 — Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ►			1.00		

Worksheet 5 — Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Total ►			1.00	

Worksheet 6 – Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Total . . . . . . ►				0.

Worksheet 7 – Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity. . . .					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Total . . . . . . ►		0.	1.00	0.	0.
Name of activity. . . .					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule . . . ►					
b Net income from form or schedule . . . ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- . . . ►					
Total . . . . . . ►		0.	1.00	0.	0.

Statement 1
Form 1041, Line 1
Interest Income

FIRST CLEARING, LLC	$	8,376.
LONG VIEW DAIRY		15,076.
WELLS FARGO BANK		578.
Total	$	24,030.

Statement 2
Form 1041, Line 11
Taxes

State and Local Taxes	$	100,010.
Total	$	100,010.

Statement 3
Form 1041, Line 15(a)
Other Deductions

INSURANCE	$	477.
OFFICE EXPENSE		437.
Net Operating Loss Carryover		8,247.
Total	$	9,161.

Statement 4
Form 1041, Other Information, Line 8
Explanation for the Delay in Closing the Estate

ADDITIONAL TIME IS REQUIRED TO COMPLETE ALL ESTATE MATTERS AND SATISFY BENEFICIARY CONCERNS.

Statement 5
Schedule E, Part I - CHINO, CA
Other Type of Property

Type of Property: DAIRY FARM

Statement 6
Schedule E, Line 19 - RENTAL DAIRY
Other Rental and Royalty Expenses

BANK FEES	$	10.
Total	$	10.

TAXABLE YEAR **2012** FORM **541**

California Fiduciary Income Tax Return

For calendar year 2012 or fiscal year beginning month day year , and ending month day year .

Type of entity:
(1) [X] Decedent's estate
(2) [ ] Simple trust
(3) [ ] Complex trust
(4) [ ] Grantor trust
(5) [ ] Bankruptcy estate — Chapter 7
(6) [ ] Bankruptcy estate — Chapter 11
(7) [ ] Pooled income fund
(8) [ ] ESBT
(9) [ ] QSST
(10) [ ] Apportioning Trust

27-6756432

ZIPPORA STAHL ESTATE
KATHLEEN KRUCKER
PERSONAL REPRESENTATIVE
381 BOB BARTON RD
JEROME, ID 83338

P
AC
A
R
RP

Check applicable boxes: [ ] Initial tax return [ ] Final tax return [ ] REMIC
[ ] Amended tax return. Attach explanation and schedules
[ ] Change in fiduciary's name or address

Trusts that have nonresident trustees and/or nonresident beneficiaries must first complete Schedule G, California Source Income and Deductions Apportionment on Side 3.

INCOME

1	Interest income	1	
2	Dividends	2	
3	Business income or (loss). Attach federal Schedule C or C-EZ (Form 1040)	3	
4	Capital gain or (loss). Attach Schedule D (541)	4	685,570.
5	Rents, royalties, partnerships, other estates and trusts, etc. Attach federal Schedule E (Form 1040)	5	6,191.
6	Farm income or (loss). Attach federal Schedule F (Form 1040)	6	
7	Ordinary gain or (loss). Attach Schedule D-1	7	
8	Other income. See instructions. State nature of income	8	
9	**Total income.** Add line 1 through line 8. (Apportioning fiduciaries: Complete Schedule G on Side 3)	9	691,761.

DEDUCTIONS

10	Interest	10		
11	Taxes	11		
12	Fiduciary fees	12		
13	Charitable deduction. Enter the amount from Side 2, Schedule A, line 5	13		
14	Attorney, accountant, and return preparer fees	14		
15a	Other deductions not subject to 2% floor. Attach schedule. STM 1	15a	8,247.	
b	Allowable miscellaneous itemized deductions subject to 2% floor	15b		
c	Total. Add line 15a and line 15b	15c	8,247.	
16	Total. Add line 10 through line 14 and line 15c. (Apportioning fiduciaries: Complete Schedule G on Side 3)	16		8,247.
17	Adjusted total income (or loss). Subtract line 16 from line 9. Enter here and on Side 3, Schedule B, line 1	17		683,514.
18	Income distribution deduction from Side 3, Schedule B, line 15. Attach Schedule K-1 (541)	18		
20a	Taxable income of fiduciary. Subtract line 18 from line 17	20a		683,514.
b	ESBT Taxable Income (S-portion only) See instructions	20b		

TAX AND PAYMENTS

21a	Regular tax 71,175. ; b Other taxes ; c QSF tax ; d Total	21	71,175.
22	Exemption credit. See instructions	22	10.
23	Credits. Attach worksheet. If one credit, enter code [ ] If more than one credit, see instructions.	23	
24	Total. Add line 22 and line 23	24	10.
25	Subtract line 24 from line 21	25	71,165.
26	Alternative minimum tax. Attach Schedule P (541)	26	
27	Mental Health Services Tax. See instructions	27	
28	Tax liability. Add line 25, line 26, and line 27	28	71,165.
29	California income tax withheld. See instructions	29	
30	California income tax previously paid. See instructions	30	
31	2012 Withholding (Form 592-B and/or 593). See instructions	31	100,000.
32	2012 CA estimated tax, amount applied from 2011 tax return, and payment with form FTB 3563	32	
33	Total payments. Add line 29, line 30, line 31, and line 32	33	100,000.
34	Tax due. Subtract line 33 from line 28	34	

ZIPPORA STAHL ESTATE 27-6756432

TAX AND PAYMENTS

35	Overpaid tax. Subtract line 28 from line 33 from Side 1	35	28,835.
36	Amount of line 35 to be credited to 2013 estimated tax	36	
37	Amount of overpaid tax available this year. Subtract line 36 from line 35	37	28,835.
38	Use tax. See instructions	38	
39	Total voluntary contributions from line 61 below	39	
40	**Refund or No Amount Due.** See instructions	40	28,835.
41	**Amount Due.** See instructions	41	
42	Underpayment of estimated tax. Check the box: ☐ FTB 5805 attached ☐ FTB 5805F attached	42	

VOLUNTARY CONTRIBUTIONS

Alzheimer's Disease/Related Disorders Fund	► 401	Municipal Shelter Spay-Neuter Fund	► 412
CA Fund for Senior Citizens	► 402	CA Cancer Research Fund	► 413
Rare and Endangered Species Preservation Program	► 403	ALS/Lou Gehrig's Disease Research Fund	► 414
State Children's Trust Fund for the Prevention of Child Abuse	► 404	Child Victims of Human Trafficking Fund	► 419
CA Breast Cancer Research Fund	► 405	CA YMCA Youth and Government Fund	► 420
CA Firefighters' Memorial Fund	► 406	CA Youth Leadership Fund	► 421
Emergency Food For Families Fund	► 407	School Supplies for Homeless Children Fund	► 422
CA Peace Officer Memorial Foundation Fund	► 408		
CA Sea Otter Fund	► 410		

61 **Total voluntary contributions.** Add line 401 through line 422. Enter here and on line 39, above ● 61

Schedule A Charitable Deduction. Do not complete for a simple trust or a pooled income fund. See instructions.

1a	Amounts paid for charitable purposes from gross income	1a	
b	Amounts permanently set aside for charitable purposes from gross income. See instructions	1b	
c	Total. Add line 1a and line 1b	1c	
2	Tax-exempt income allocable to charitable contributions. See instructions	2	
3	Subtract line 2 from line 1c	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	**Charitable Deduction.** Add line 3 and line 4. Enter here and on Side 1, line 13	5	

Other Information.

1 Date trust was created or, if an estate, date of decedent's death:
a ● 6/27/2010
b Name of Grantor(s) of Trust
(please attach an additional sheet if necessary)

2a If an estate, was decedent a California resident? ☐ Yes ☒ No
b Was decedent married at date of death? ☐ Yes ☒ No
c If 'Yes,' enter surviving spouse's/RDP's social security number (or ITIN) and name:

3 If an estate, enter fair market value (FMV) of:
a Decedent's assets at date of death
b Assets located in California
c Assets located outside California
Note: Income of final year is taxable to beneficiaries.

4 If this is the final return of an estate, enter date of court order, if applicable, authorizing the final distribution

5 Did the estate or trust receive tax-exempt income? ☐ Yes ☒ No
If 'Yes,' attach computation of the allocation of expenses.

6 Is this tax return for a short taxable year? ☐ Yes ☒ No

7 Has the estate or trust included a Reportable Transaction, or Listed Transaction within this return? If 'Yes,' complete and attach federal Form 8886 ☐ Yes ☒ No

8 Does this trust have a beneficial interest in a trust or is it a grantor of another trust? Attach schedule of trusts and federal IDs ● ☐ Yes ☒ No

9 During the year did the estate or trust defer any income from the disposition of assets? ● ☐ Yes ☒ No

Please Sign Here

Under penalties of perjury, I declare that I have examined this tax return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of trustee or officer representing fiduciary — Date

Paid Preparer's Use Only

Preparer's signature ► GARY B. GENSKE, CPA — Date 4/09/13 — Check if self-employed ☐ — ● PTIN P00020720

Firm's name (or yours, if self-employed) and address ► GENSKE, MULDER & CO., LLP
1835 NEWPORT BLVD, STE. D263
COSTA MESA, CA 92627

● FEIN 95-3623488
Telephone (949) 650-9580

May the FTB discuss this return with the preparer shown above (see instructions)? ● ☒ Yes ☐ No

ZIPPORA STAHL ESTATE 27-6756432

Schedule B Income Distribution Deduction.

1	Adjusted total income. Enter amount from Side 1, line 17	1	
2	Adjusted tax-exempt interest and nontaxable gain from installment sale of small business stock. See instructions	2	
3	Net gain shown on Schedule D (541), line 9, column a. If net loss, enter -0-. See instructions	3	
4	Enter amount from Schedule A, line 4	4	
5	Enter capital gain included on Schedule A, line 1c	5	
6	If the amount on Side 1, line 4 is a gain, enter the amount here as a negative number. If the amount on Side 1, line 4 is a loss, enter the loss as a positive number	6	
7	Distributable net income. Combine line 1 through line 6	7	
8	Income for the taxable year determined under the governing instrument (accounting income)	8	
9	Income required to be distributed currently (IRC Section 651)	9	
10	Other amounts paid, credited, or otherwise required to be distributed (IRC Section 661)	10	
11	Total distributions. Add line 9 and line 10. If the result is greater than line 8, see federal Schedule B (1041) instructions for line 11 to see if you must complete Schedule J (541)	11	
12	Enter the total amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7	14	
15	**Income distribution deduction.** Enter the smaller of line 13 or line 14 here and on Side 1, line 18	15	

Schedule G California Source Income and Deduction Apportionment. Complete line 1a through line 1f before Part II.

Part I: If a trust, enter the number of:

1a	California resident trustees	
1b	Nonresident trustees	
1c	Total number of trustees (line a plus line b)	
1d	California resident beneficiaries	
1e	Nonresident beneficiaries	
1f	Total number of beneficiaries (line d plus line e)	

Part II: Income Allocation. Complete column A through column F. Enter the amounts from lines 1-9, column F, on Form 541 Side 1, lines 1-9.

Type of Income	A California Source Income	B Non-California Source Income	C Apportioned Income # CA Trustees X B / # Total Trustees	D Remaining Non-California Source Income Col. B - Col. C	E Apportioned Income #CA Beneficiaries X D / # Total Beneficiaries	F Income Reportable to California (Col. A+C+E)
1 Interest						
2 Dividends						
3 Business income						
4 Capital gain						
5 Rents, royalties, etc.						
6 Farm income						
7 Ordinary gain						
8 Other income						
9 Total income						

Deduction Allocation. Complete column G and column H. Enter the amounts from lines 10-15b, Column H, on Form 541 Side 1, lines 10-15b.

Type of Deduction	G Total Deductions	H Amounts Allocable to California
10 Interest		
11 Taxes		
12 Fiduciary fees		
13 Charitable deduction		
14 Attorney, accountant, and return preparer fees		
15a Other deduction not subject to 2% floor		
15b Allowable miscellaneous itemized deductions subject to 2% floor		
16 Total deductions		

TAXABLE YEAR

2012 **Capital Gain or Loss**

CALIFORNIA SCHEDULE

D (541)

Attach to Form 541 or Form 109.

Name as shown on return: ZIPPORA STAHL ESTATE

FEIN: 27-6756432

Part I Capital Gain and Loss

(a) Description of property: Example, 100 shares 7% preferred of 'Z' Company	(b) How was property held, community, separately, jointly?	(c) Date acquired (month, day, year)	(d) Date sold (month, day, year)	(e) Gross sales price	(f) Cost or other basis, as adjusted, plus expense of sale	(g) Gain (or loss) column (e) less column (f)
1 121.87 ACRES 50% INTEREST IN CHINO LAND						
			12/21/12	16,339,000.	15,653,430.	685,570.

2	Capital gain from installment sales from form FTB 3805E, line 26 or line 37	2	
3	Enter your share of net gain or (loss) from partnerships, S corporations, limited liability companies (LLCs), and other fiduciaries	3	
4	Capital gain distributions. See instructions	4	
5	Net gain or (loss). Combine line 1, column (g), line 2, line 3, and line 4	5	685,570.
6	Enter gain, if applicable, from California Schedule D-1	6	
7	Capital loss carryover from prior years. There is no capital loss carryover from a decedent to an estate	7	
8	Net gain or (loss). Combine line 5, line 6, and line 7	8	685,570.

Part II Summary of Part I

		(a) Beneficiaries	(b) Fiduciary	(c) Total
9	Enter the net gain or (loss) from line 8, above. If line 9, column (c), is a net gain, enter the gain on Form 541, line 4 or Form 109, Side 2, Part I, line 4a. If line 9, column (c), is a net loss, complete Part III. See instructions	9	685570.	685570.

Part III Computation of Capital Loss Limitation

10	Enter here and enter as a loss on Form 541, line 4 or Form 109, Side 2, Part 1, line 4c the smaller of: The net loss on line 9, column (c) or $3,000	10	

Part IV Computation of Capital Loss Carryover from 2012 to 2013

If the net loss on line 8 is more than $3,000, determine the capital loss carryover. Attach a copy of Schedule D (Form 1041) to Form 541 or Form 109. See instructions.

TAXABLE YEAR **2012**

Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Individuals, Estates, and Trusts

CALIFORNIA FORM **3805V**

Attach to your California tax return.

Names as shown on return: ZIPPORA STAHL ESTATE

SSN or ITIN:

FEIN: 27-6756432

Part I Computation of Current Year NOL for Individuals, Estates, and Trusts. If you do not have a current year NOL, go to Part II.

Section A — California Residents Only (Nonresidents go to Section B.)

1 Adjusted gross income from 2012 Form 540, line 17. If negative, use brackets. Estates and Trusts, begin on line 3 1

2 Itemized deductions or standard deduction from 2012 Form 540, line 18 2

3a Combine line 1 and line 2. (Estates and Trusts, enter taxable income, see instructions.) If negative, use brackets. If positive, enter -0- here and on line 25. Do not complete the rest of Section A. You do not have a current year NOL. Complete Part II and Part III if you have a carryover from prior years 3a

b 2012 designated disaster loss included in line 3a. Enter as a positive number 3b

c Combine line 3a and line 3b. If negative, use brackets and continue to line 4. If zero or more, do not complete the rest of Part I. Enter the amount from line 3b, if any, in Part III, line 3, column (d) and complete Part II and Part III as instructed 3c

Enter amounts on line 4 through line 24 as if they were all positive numbers. See instructions.

4 Nonbusiness capital losses 4

5 Nonbusiness capital gains. See instructions 5

6 If line 4 is more than line 5, enter the difference; otherwise, enter -0- 6

7 If line 4 is less than line 5, enter the difference; otherwise, enter -0- 7

8 Nonbusiness deductions 8

9 Nonbusiness income other than capital gains 9

10 Add line 7 and line 9 10

11 If line 8 is more than line 10, enter the difference; otherwise, enter -0- 11

12 If line 8 is less than line 10, enter the difference; otherwise, enter -0- 12

13 Business capital losses 13

14 Business capital gains 14

15 Add line 12 and line 14 15

16 If line 13 is more than line 15, enter the difference; otherwise, enter -0- 16

17 Add line 6 and line 16 17

18 Enter the loss, if any, from line 8 of Schedule D (540). Estates and Trusts, enter the loss, if any, from line 9, column (c), of Schedule D (541). If you do not have a loss on that line, skip line 18 through line 21 and enter on line 22 the amount from line 17 18

19 Enter the loss, if any, from line 9 of Schedule D (540). Estates and Trusts, enter the loss, if any, from line 10 of Schedule D (541). Enter as a positive number 19

20 If line 18 is more than line 19, enter the difference; otherwise, enter -0- 20

21 If line 19 is more than line 18, enter the difference; otherwise enter -0- 21

22 Subtract line 20 from line 17. If zero or less, enter -0- 22

23 NOL and disaster loss carryovers from prior years. See instructions 23

24 Add lines 11, 21, 22, and 23 24

25 2012 NOL carryover. Combine line 3c and line 24. If more than zero, enter -0-. You do not have a current year NOL to carryover 25

ZIPPORA STAHL ESTATE 27-6756432

Section B — Nonresidents and Part-Year Residents Only — Computation of Current Year California NOL

		A Enter total amounts as if you were a CA resident for entire year.	B Enter amounts earned or received from CA sources if you were a nonresident for the entire year.	C Enter amounts earned or received during the portion of the year you were a CA resident.	D Enter amounts earned or received from CA sources during the portion of the year you were a nonresident.	E Total Combine columns C and D
1	Adjusted gross income. See instructions If negative, use brackets. 1					
2	Itemized deductions or standard deduction. See instructions. 2					
3a	Combine line 1 and line 2. See instructions 3a	676,130.	683,514.		683,514.	683,514.
b	2012 designated disaster loss included in line 3a. Enter as a positive number. 3b					
c	Combine line 3a and line 3b. If negative, use brackets and continue to line 4. 3c					
Enter amounts on line 4 through line 24 as if they were all positive numbers.						
4	Nonbusiness capital losses. 4					
5	Nonbusiness capital gains 5					
6	If line 4 is more than line 5, enter the difference; otherwise, enter -0- 6					
7	If line 4 is less than line 5, enter the difference; otherwise, enter -0- 7					
8	Nonbusiness deductions. 8					
9	Nonbusiness income other than capital gains. 9					
10	Add line 7 and line 9 10					
11	If line 8 is more than line 10, enter the difference; otherwise, enter -0- 11					
12	If line 8 is less than line 10, enter the difference; otherwise, enter -0- 12					
13	Business capital losses 13					
14	Business capital gains 14					
15	Add line 12 and line 14 15					
16	If line 13 is more than line 15, enter the difference; otherwise, enter -0- 16					
17	Add line 6 and line 16 17					
18	Enter the loss, if any, from line 4 of Schedule D (540NR) worksheet for nonresidents and part-year residents. See instructions 18					
19	Enter the loss, if any, from line 5 of Schedule D (540NR) worksheet for nonresidents and part-year residents. Enter as a positive number. 19					
20	If line 18 is more than line 19, enter the difference; otherwise, enter -0- 20					
21	If line 19 is more than line 18, enter the difference; otherwise, enter -0- 21					
22	Subtract line 20 from line 17. If zero or less, enter -0- 22					
23	NOL and disaster loss carryovers from prior years 23					
24	Add lines 11, 21, 22, and 23. 24					
25	2012 NOL carryover. Combine line 3c and line 24. If more than zero, enter -0- 25					

Part II Determine 2012 Modified Taxable Income (MTI). Be sure to read the instructions for Part II.

1 Taxable income. See instructions	1	683,514.
Enter amounts on line 2 through line 4 as if they were all positive numbers.		
2 Capital loss deduction included in line 1	2	
3 Disaster loss carryover included in line 1	3	
4 NOL carryover included in line 1	4	8,247.
5 MTI. Combine line 1 through line 4. If line 5 is zero or less, enter -0-	5	691,761.

Part III NOL Carryover and Disaster Loss Carryover Limitations. See Instructions.

		(g) Available balance	
1 MTI from Part II, line 5	1	691,761.	

Prior Year NOLs

(a) Year of loss	(b) Code	(c) Type of NOL* See below	(d) Initial Loss	(e) Carryover from 2011	(f) Amount used in 2012		(h) Carryover to 2013 subtract column (f) from column (e)
2 2010		GEN	7,479.	7,479.	7,479.	684,282.	
2011		GEN	768.	768.	768.	683,514.	

Current Year NOLs

3 2012		DIS					
4 2012							
2012							
2012							
2012							

*Type of NOL: General (GEN), New Business (NB), Eligible Small Business (ESB), or Disaster (DIS).

5 NOL carryover. Add the carryover amounts in column (h) that are not the result of a disaster loss	5	
6 Disaster loss carryover. Enter the total loss carryover amounts in column (h) that are the result of disaster losses	6	

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

CA Amounts

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)

► Attach to Form 1040, 1040NR, or Form 1041.

► Information about Schedule E and its separate instructions is at www.irs.gov/form1040.

OMB No. 1545-0074

2012

Attachment Sequence No. 13

Name(s) shown on return: ZIPPORA STAHL ESTATE

Your social security number: 27-6756432

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2012 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

	1a Physical address of each property (street, city, state, ZIP code)
A	CHINO, CA
B	
C	

	1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.		Fair Rental Days	Personal Use Days	QJV
A	8		A			
B			B			
C			C			

Type of Property: Statement 2

1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental

2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income:		Properties: A	B	C
3 Rents received	3			
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9	3,552.		
10 Legal and other professional fees	10			
11 Management fees	11	1,788.		
12 Mortgage interest paid to banks, etc (see instructions)	12			
13 Other interest	13			
14 Repairs	14	6,471.		
15 Supplies	15			
16 Taxes	16	-19,135.		
17 Utilities	17	1,123.		
18 Depreciation expense or depletion	18			
19 Other (list) ► See Stm 3	19	10.		
20 Total expenses. Add lines 5 through 19	20	-6,191.		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	6,191.		
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22			

23a Total of all amounts reported on line 3 for all rental properties	23a		
b Total of all amounts reported on line 4 for all royalty properties	23b		
c Total of all amounts reported on line 12 for all properties	23c		
d Total of all amounts reported on line 18 for all properties	23d		
e Total of all amounts reported on line 20 for all properties	23e	-6,191.	
24 Income. Add positive amounts shown on line 21. Do not include any losses	24		6,191.
25 Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25		
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26		6,191.

Statement 1
Form 541, Line 15a
Other Deductions

Net Operating Loss Carryover	$ 8,247.
Total	$ 8,247.

Statement 2
Schedule E, Part I - CHINO, CA
Other Type of Property

Type of Property: DAIRY FARM

Statement 3
Schedule E, Line 19 - RENTAL DAIRY
Other Rental and Royalty Expenses

BANK FEES	$ 10.
Total	$ 10.

FORM 66 EFO00036 07-25-12

IDAHO FIDUCIARY INCOME TAX RETURN

1032

2012

AMENDED RETURN, check the box. ▪ [X] See instructions, page 5 for the reasons for amending and enter the number. 3

For calendar year 2012, or fiscal year beginning Month Day Year 12 ending Month Day Year

State use only: STAH

Name of estate or trust: ZIPPORA STAHL ESTATE

State use only: STAH

Federal employer identification number: 27-6756432

Name and title of fiduciary: KATHLEEN KRUCKER PERSONAL REPRESENTATIVE

Address of fiduciary (number and street): 381 BOB BARTON RD

City, State and Zip Code: JEROME, ID 83338

Check all that apply: ▪ [X] Resident Return ▪ [ ] Grantor Trust ▪ [ ] Electing Small Business Trust ▪ [ ] Qualified Funeral Trust (QFT) ▪ [ ] The trust or estate included Idaho Form PTE-12 with this return. ▪ [ ] Composite Return

1	If reporting for an estate: a Decedent's social security number [redacted] b Enter the decedent's date of death 6/27/2010 c Was the decedent a resident of Idaho? [X] Yes ▪ [ ] No d If no, indicate the state of residence		
2	Does this estate or trust have any nonresident beneficiaries? [ ] Yes ▪ [X] No		
3	Is this a final return? [ ] Yes ▪ [X] No		
4	Idaho adjusted income. Enter the amount from Schedule B, page 2, line 11	4	309,469.
5	Income distribution deduction to beneficiaries	5	
6	Estate tax deduction	6	
7	Subtract lines 5 and 6 from line 4	7	309,469.
8	Exemption. See instructions	8	600.
9	Idaho taxable income. Subtract line 8 from line 7	9	308,869.
10	Idaho income tax. Use the Tax Computation Schedule, see instructions, page 10	10	22,618.
11	Donation to Opportunity Scholarship Program	11	
12	Credits. Enter the amount from Schedule C, page 2, line 6. See instructions	12	19,956.
13	Add lines 10 and 11 and subtract line 12. If less than zero, enter zero	13	2,662.
14	Income distribution reportable by beneficiaries. See instructions	14	
15	Tax on income distribution. Multiply line 14 by 7.4% ▪ less credits ▪	15	0.
16	Permanent building fund tax. See instructions. Enter zero if this is a QFT	16	10.
17	Total tax from recapture of income tax credits from Form 44, Part II, line 7. Include Form 44	17	
18	Fuels tax due. Include Form 75	18	
19	Sales/Use tax due on Internet, mail order, and other nontaxed purchases	19	
20	Tax from recapture of qualified investment exemption. Include Form 49ER	20	
21	Tax on Electing Small Business Trust or QFT composite return. See instructions	21	
22	Total tax. Add lines 13 and 15 through 21	22	2,672.
23	Estimated tax payments	23	1,029,107.
24	Idaho income tax withheld. Include Form(s) W-2	24	
25	Special fuels tax refund ____ Gasoline tax refund ____ Include Form 75	25	
26	Hire One Act credit. Include Form 72	26	0
27	Total payments and other credits. Add lines 23 through 26	27	1,029,107.
REFUND or PAYMENT DUE	If line 22 is more than line 27, go to line 28. If line 22 is less than line 27, go to line 31.		
28	Tax due. Subtract line 27 from line 22	28	
29	Penalty ▪ ____ Interest from due date ▪ ____ Enter total	29	
30	TOTAL DUE. Add line 28 and line 29	▪	
31	Overpayment. Subtract line 22 from line 27	31	1,026,435.
32	REFUND. Amount of line 31 you want refunded to you	▪	1,026,435.
33	ESTIMATED TAX. Amount you want credited to your 2013 estimated tax. Subtract line 32 from line 31	33	

IDFA9912L 01/03/13

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Schedule A – Computation of the federal taxable income of the estate or trust derived from Idaho sources.

To be completed by all nonresident and part-year resident estates or trusts.

1	Total income from federal Form 1041, line 9		1	
2	Income derived from Idaho sources. Include a schedule	2		
3	Idaho capital gain or (loss). Include a schedule	3		
4	Add lines 2 and 3		4	
5	Percent of total federal income derived from Idaho sources. Divide line 4 by line 1		5	%
6	Deductions from federal Form 1041 not allocable to any specific income		6	
7	Prorated deductions. Multiply line 6 by line 5		7	
8	Federal taxable income derived from Idaho sources. Subtract line 7 from line 4. Enter here and on Schedule B, line 1		8	

Schedule B – Idaho Adjusted Income

1	Adjusted total income or (loss). Federal Form 1041, line 17 or Schedule A, line 8 if nonresident •		1	209,459.
2	Interest and dividends not taxable under Internal Revenue Code. Include a schedule •		2	
3	State, municipal and local income taxes deducted on federal return •		3	100,010.
4	Net operating loss deducted on federal return •		4	8,247.
5	Addition for bonus depreciation. Include computations •		5	
6	Other additions. Include a schedule •		6	
7	Idaho net operating loss carryover • 8,247. carryback • Enter total		7	8,247.
8	Income exempt from Idaho tax. Include a schedule •		8	
9	Subtraction for bonus depreciation. Include computations •		9	
10	Other subtractions. Include a schedule •		10	
11	Idaho adjusted income. Add lines 1 through 6 and subtract lines 7 through 10. Enter here and on line 4, page 1		11	309,469.

Schedule C – Credits

1	Did you claim the qualified investment exemption for investment tax credit property acquired this tax year?			☐ Yes • ☒ No
2	Credit for income tax paid to other states – **Nonresidents cannot claim this credit.**			
a	Idaho income tax, line 10, page 1	2a 22,618.		
b	Total income from federal Form 1041, line 9	2b 368,473.		
c	Enter the portion of line b derived from sources in and taxed by the other state •	2c 325,100.		
d	Divide line c by line b. Enter percentage here	2d 88.23 %		
e	Multiply line a by line d	2e 19,956.		
f	Other state's tax due less its income tax credits •	2f 71,165.		
g	Credit for income tax paid to other states. Enter the smaller of line e or line f. A copy of the other state's return MUST accompany this return •		2g	19,956.
3	Credit for contributions to Idaho educational entities •		3	
4	Credit for contributions to Idaho youth and rehabilitation facilities •		4	
5	Total business income tax credits from Form 44, Part I, line 12. Include Form 44		5	
6	Total credits. Add lines 2g through 5. Enter total here and on line 12, page 1		6	19,956.

• ☒ Within 180 days of receiving this return, the Idaho State Tax Commission may discuss this return with the paid preparer identified below.

Under penalties of perjury, I declare that to the best of my knowledge and belief this return is true, correct and complete.

	Signature of fiduciary	Paid preparer's signature	Preparer's EIN, SSN or PTIN
SIGN HERE	• [signature]	• GARY B. GENSKE, CPA	• [redacted]
	Date / Phone number	Address and phone number	
	9/25/2013 208-324-7904	Genske, Mulder & Co., LLP 1835 Newport Blvd, Ste. D263 Costa Mesa, CA 92627 95-3623488 (949) 650-9580	

MAIL TO: Idaho State Tax Commission, P.O. Box 56, Boise, ID 83756-0056
INCLUDE A COMPLETE COPY OF YOUR FEDERAL FORM 1041.

ZIPPORA STAHL ESTATE 27-6756432

Tax return is being amended to report step up in basis for Chino, California property sold.

Recomputed Federal Form 1041

Department of the Treasury — Internal Revenue Service

Form 1041 U.S. Income Tax Return for Estates and Trusts

► Information about Form 1041 and its separate instructions is at *www.irs.gov/form1041.*

2012 OMB No. 1545-0092

A Check all that apply:
- [X] Decedent's estate
- [ ] Simple trust
- [ ] Complex trust
- [ ] Qualified disability trust
- [ ] ESBT (S portion only)
- [ ] Grantor type trust
- [ ] Bankruptcy estate — Chapter 7
- [ ] Bankruptcy estate — Chapter 11
- [ ] Pooled income fund

For calendar year 2012 or fiscal year beginning , 2012 and ending ,

ZIPPORA STAHL ESTATE
KATHLEEN KRUCKER
PERSONAL REPRESENTATIVE
381 BOB BARTON RD
JEROME, ID 83338

C Employer identification number: 27-6756432

D Date entity created: 6/27/2010

E Nonexempt charitable and split-interest trusts, check applicable box(es), see instr:
- [ ] Described in section 4947(a)(1). Check here if not a private foundation. . . ► [ ]
- [ ] Described in section 4947(a)(2)

B Number of Schs K-1 attached (see instructions). . . ►

F Check applicable boxes: [ ] Initial return [ ] Final return [ ] Amended return [ ] Change in trust's name [ ] Change in fiduciary [ ] Change in fiduciary's name [ ] Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election. . . . . ► [ ]

Income	1	Interest income. . . See Statement 1	1	24,030.
	2a	Total ordinary dividends	2a	
	b	Qualified dividends allocable to: (1) Beneficiaries (2) Estate/trust		
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	3	
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4	318,909.
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	25,534.
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6	
	7	Ordinary gain or (loss). Attach Form 4797	7	
	8	Other income. List type and amount	8	
	9	Total income. Combine lines 1, 2a, and 3 through 8 ►	9	368,473.
Deductions	10	Interest. Check if Form 4952 is attached ► [ ]	10	
	11	Taxes. . . See Statement 2	11	100,010.
	12	Fiduciary fees	12	
	13	Charitable deduction (from Schedule A, line	13	
	14	Attorney, accountant, and return preparer fe	14	49,843.
	15a	Other deductions not subject to 2% floor (attach schedule). . . See Statement 3	15a	9,161.
	b	Allowable miscellaneous itemized deductions subject to the 2% floor	15b	
	16	Add lines 10 through 15b ►	16	159,014.
	17	Adjusted total income or (loss). Subtract line 16 from line 9 . . . 17 209,459.		
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18	
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19	
	20	Exemption	20	600.
	21	Add lines 18 through 20 ►	21	600.
Tax and Payments	22	Taxable income. Subtract line 21 from line 17. If a loss, see instructions	22	208,859.
	23	Total tax (from Schedule G, line 7)	23	46,060.
	24	Payments: a 2012 estimated tax payments and amount applied from 2011 return	24a	2,230,000.
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b	
	c	Subtract line 24b from line 24a	24c	2,230,000.
	d	Tax paid with Form 7004 (see instructions)	24d	
	e	Federal income tax withheld. If any is from Form(s) 1099, check ► [ ]	24e	
		Other payments: f Form 2439 ; g Form 4136 ; Total ►	24h	
	25	Total payments. Add lines 24c through 24e, and 24h ►	25	2,230,000.
	26	Estimated tax penalty (see instructions)	26	
	27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27	
	28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28	2,183,940.
	29	Amount of line 28 to be: a Credited to 2013 estimated tax ► ; b Refunded ►	29	2,183,940.

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of fiduciary or officer representing fiduciary | Date | ► EIN of fiduciary if a financial institution

May the IRS discuss this return with the preparer shown below (see instrs)? [X] Yes [ ] No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [ ] if self-employed	PTIN
GARY B. GENSKE, CPA	GARY B. GENSKE, CPA	4/09/13		P00020720

Firm's name ► Genske, Mulder & Co., LLP — Firm's EIN ► 95-3623488

Firm's address ► 1835 Newport Blvd, Ste. D263, Costa Mesa, CA 92627 — Phone no. (949) 650-9580

Schedule A Charitable Deduction. Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see instructions)	1	
2	Tax-exempt income allocable to charitable contributions (see instructions)	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see instructions)	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction

1	Adjusted total income (see instructions)		1	
2	Adjusted tax-exempt interest		2	
3	Total net gain from Schedule D (Form 1041), line 15, column (1) (see instructions)		3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)		4	
5	Capital gains for the tax year included on Schedule A, line 1 (see instructions)		5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number		6	
7	**Distributable net income.** Combine lines 1 through 6. If zero or less, enter -0-		7	
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8		
9	Income required to be distributed currently		9	
10	Other amounts paid, credited, or otherwise required to be distributed		10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions		11	
12	Enter the amount of tax-exempt income included on line 11		12	
13	Tentative income distribution deduction. Subtract line 12 from line 11		13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-		14	
15	**Income distribution deduction.** Enter the smaller of line 13 or line 14. Here and on page 1, line 18		15	

Schedule G Tax Computation (see instructions)

1	**Tax:** a Tax on taxable income (see instructions)	1a	30,969.		
	b Tax on lump-sum distributions. Attach Form 4972	1b			
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c	15,091.		
	d **Total.** Add lines 1a through 1c			1d	46,060.
2a	Foreign tax credit. Attach Form 1116	2a			
b	General business credit. Attach Form 3800	2b			
c	Credit for prior year minimum tax. Attach Form 8801	2c			
d	Bond credits. Attach Form 8912	2d			
3	**Total credits.** Add lines 2a through 2d			3	0.
4	Subtract line 3 from line 1d. If zero or less, enter -0-			4	46,060.
5	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611			5	
6	Household employment taxes. Attach Schedule H (Form 1040)			6	
7	**Total tax.** Add lines 4 through 6. Enter here and on page 1, line 23			7	46,060.

	Other Information	Yes	No
1	Did the estate or trust receive tax-exempt income? If 'Yes,' attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends. ► $		X
2	Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3	At any time during the calendar year 2012, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If 'Yes,' enter the name of the foreign country ►		X
4	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If 'Yes,' the estate or trust may have to file Form 3520. See instructions		X
5	Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If 'Yes,' see instructions for required attachment		X
6	If this is an estate or a complex trust making the section 663(b) election, check here (see instructions) ► ☐		
7	To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see instructions) ► ☐		
8	If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here ► ☒	St	4
9	Are any present or future trust beneficiaries skip persons? See instructions		X

SCHEDULE I (Form 1041)
Department of the Treasury
Internal Revenue Service

Alternative Minimum Tax — Estates and Trusts

► Attach to Form 1041.
► Information about Schedule I (Form 1041) and its separate instructions is at *www.irs.gov/form1041.*

OMB No. 1545-0092

2012

Name of estate or trust: ZIPPORA STAHL ESTATE

Employer identification number: 27-6756432

Part I Estate's or Trust's Share of Alternative Minimum Taxable Income

1	Adjusted total income or (loss) (from Form 1041, line 17)	1	209,459.
2	Interest	2	
3	Taxes	3	100,010.
4	Miscellaneous itemized deductions (from Form 1041, line 15b)	4	
5	Refund of taxes	5	
6	Depletion (difference between regular tax and AMT)	6	
7	Net operating loss deduction. Enter as a positive amount	7	8,247.
8	Interest from specified private activity bonds exempt from the regular tax	8	
9	Qualified small business stock (see instructions)	9	
10	Exercise of incentive stock options (excess of AMT income over regular tax income)	10	
11	Other estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	11	
12	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	12	
13	Disposition of property (difference between AMT and regular tax gain or loss)	13	
14	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	14	
15	Passive activities (difference between AMT and regular tax income or loss)	15	
16	Loss limitations (difference between AMT and regular tax income or loss)	16	
17	Circulation costs (difference between regular tax and AMT)	17	
18	Long-term contracts (difference between AMT and regular tax income)	18	
19	Mining costs (difference between regular tax and AMT)	19	
20	Research and experimental costs (difference between regular tax and AMT)	20	
21	Income from certain installment sales before January 1, 1987	21	
22	Intangible drilling costs preference	22	
23	Other adjustments, including income-based related adjustments	23	
24	Alternative tax net operating loss deduction (see instructions for limitation that applies)	24	-8,247.
25	Adjusted alternative minimum taxable income. Combine lines 1 through 24	25	309,469.

Note: *Complete Part II below before going to line 26.*

26	Income distribution deduction from Part II, line 44	26			
27	Estate tax deduction (from Form 1041, line 19)	27			
28	Add lines 26 and 27			28	
29	Estate's or trust's share of alternative minimum taxable income. Subtract line 28 from line 25			29	309,469.

If line 29 is:

- $22,500 or less, stop here and enter -0- on Form 1041, Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
- Over $22,500, but less than $165,000, go to line 45.
- $165,000 or more, enter the amount from line 29 on line 51 and go to line 52.

Part II Income Distribution Deduction on a Minimum Tax Basis

30	Adjusted alternative minimum taxable income (see instructions)	30	
31	Adjusted tax-exempt interest (other than amounts included on line 8)	31	
32	Total net gain from Schedule D (Form 1041), line 15, column (1). If a loss, enter -0-	32	
33	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Form 1041, Schedule A, line 4)	33	
34	Capital gains paid or permanently set aside for charitable purposes from gross income (see instructions)	34	
35	Capital gains computed on a minimum tax basis included on line 25	35	
36	Capital losses computed on a minimum tax basis included on line 25. Enter as a positive amount	36	
37	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 30 through 36. If zero or less, enter -0-	37	
38	Income required to be distributed currently (from Form 1041, Schedule B, line 9)	38	
39	Other amounts paid, credited, or otherwise required to be distributed (from Form 1041, Schedule B, line 10)	39	
40	Total distributions. Add lines 38 and 39	40	
41	Tax-exempt income included on line 40 (other than amounts included on line 8)	41	
42	Tentative income distribution deduction on a minimum tax basis. Subtract line 41 from line 40	42	

Part II Income Distribution Deduction on a Minimum Tax Basis *(continued)*

43	Tentative income distribution deduction on a minimum tax basis. Subtract line 31 from line 37. If zero or less, enter -0-			43	
44	**Income distribution deduction on a minimum tax basis.** Enter the smaller of line 42 or line 43. Enter here and on line 26			44	

Part III Alternative Minimum Tax

45	Exemption amount			45	$22,500.
46	Enter the amount from line 29	46			
47	Phase-out of exemption amount	47	$75,000.		
48	Subtract line 47 from line 46. If zero or less, enter -0-	48	0.		
49	Multiply line 48 by 25% (.25)			49	
50	Subtract line 49 from line 45. If zero or less, enter -0-			50	0.
51	Subtract line 50 from line 46			51	309,469.
52	Go to Part IV of Schedule I to figure line 52 if the estate or trust has qualified dividends or has a gain on lines 14a and 15 of column (2) of Schedule D (Form 1041) (as refigured for the AMT, if necessary). Otherwise, if line 51 is – • $175,000 or less, multiply line 51 by 26% (.26). • Over $175,000, multiply line 51 by 28% (.28) and subtract $3,500 from the result			52	46,060.
53	Alternative minimum foreign tax credit (see instructions)			53	
54	Tentative minimum tax. Subtract line 53 from line 52			54	46,060.
55	Enter the tax from Form 1041, Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)			55	30,969.
56	**Alternative minimum tax.** Subtract line 55 from line 54. If zero or less, enter -0-. Enter here and on Form 1041, Schedule G, line 1c			56	15,091.

Part IV Line 52 Computation Using Maximum Capital Gains Rates

Caution: *If you did not complete Part V of Schedule D (Form 1041), the Schedule D Tax Worksheet, or the Qualified Dividends Tax Worksheet, see the instructions before completing this part.*

57	Enter the amount from line 51			57	309,469.
58	Enter the amount from Schedule D (Form 1041), line 22, line 17 of the Schedule D Tax Worksheet, or line 4 of the Qualified Dividends Tax Worksheet, whichever applies (as refigured for the AMT, if necessary)	58	18,909.		
59	Enter the amount from Schedule D (Form 1041), line 14b, column (2) (as refigured for the AMT, if necessary). If you did not complete Schedule D for the regular tax or the AMT, enter -0-	59	0.		
60	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 58. Otherwise, add lines 58 and 59 and enter the **smaller** of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary)	60	318,909.		
61	Enter the **smaller** of line 57 or line 60			61	309,469.
62	Subtract line 61 from line 57			62	
63	If line 62 is $175,000 or less, multiply line 62 by 26% (.26). Otherwise, multiply line 62 by 28% (.28) and subtract $3,500 from the result			63	
64	Maximum amount subject to the 0% rate	64	$2,400.		
65	Enter the amount from line 23 of Schedule D (Form 1041), line 14 of the Schedule D Tax Worksheet, or line 5 of the Qualified Dividends Tax Worksheet in the Instructions for Form 1041, whichever applies (as figured for the regular tax). If you did not complete Schedule D or either worksheet for the regular tax, enter -0-	65			
66	Subtract line 65 from line 64. If zero or less, enter -0-	66	2,400.		
67	Enter the **smaller** of line 57 or line 58	67	309,469.		
68	Enter the **smaller** of line 66 or line 67	68	2,400.		
69	Subtract line 68 from line 67	69	307,069.		
70	Multiply line 69 by 15% (.15)			70	46,060.
	If line 59 is zero or blank, skip lines 71 and 72 and go to line 73. Otherwise, go to line 71.				
71	Subtract line 67 from line 61	71			
72	Multiply line 71 by 25% (.25)			72	
73	Add lines 63, 70, and 72			73	46,060.
74	If line 57 is $175,000 or less, multiply line 57 by 26% (.26). Otherwise, multiply line 57 by 28% (.28) and subtract $3,500 from the result			74	83,151.
75	Enter the **smaller** of line 73 or line 74 here and on line 52			75	46,060.

SCHEDULE D (Form 1041)

Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

► Attach to Form 1041, Form 5227, or Form 990-T.
► Information about Schedule D (Form 1041) and its separate instructions is at *www.irs.gov/form1041*.

OMB No. 1545-0092

2012

Name of estate or trust	Employer identification number
ZIPPORA STAHL ESTATE	27-6756432

Note: *Form 5227 filers need to complete only Parts I and II.*

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

1a	(a) Description of property (Example: 100 shares 7% preferred of 'Z' Co)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)
	685000 BANK OF BARODA	11/09/11	8/22/12	685,000.	685,000.	0.
	750000 BANK OF CHINA NEW YORK CITY NY	10/13/11	FDIC INSU 4/19/12	750,000.	750,000.	0.
	750000 GE CAPITAL RETAIL BK CO	10/13/11	5/21/12	750,000.	750,000.	0.

b	Enter the short-term gain or (loss), if any, from Schedule D-1, line 1b	1b	
2	Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824	2	
3	Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts	3	
4	Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 2011 Capital Loss Carryover Worksheet	4	
5	**Net short-term gain or (loss).** Combine lines 1a through 4 in column (f). Enter here and on line 13, column (3) on page 2 ►	5	

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

6a	(a) Description of property (Example: 100 shares 7% preferred of 'Z' Co)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)
	121.87 ACRES 50% INTEREST IN CHINO LAND		12/21/12	16,318,909.	16,000,000.	318,909.
	750000 COMPASS BK CD BIRMINGHAM AL	10/13/11	10/19/12	750,000.	750,000.	0.

b	Enter the long-term gain or (loss), if any, from Schedule D-1, line 6b	6b	
7	Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824	7	
8	Net long-term gain or (loss) from partnerships, S corporations, and other estates or trusts	8	
9	Capital gain distributions	9	
10	Gain from Form 4797, Part I	10	
11	Long-term capital loss carryover. Enter the amount, if any, from line 14 of the 2011 Capital Loss Carryover Worksheet	11	
12	**Net long-term gain or (loss).** Combine lines 6a through 11 in column (f). Enter here and on line 14a, column (3) on page 2 ►	12	318,909.

Part III Summary of Parts I and II Caution: *Read the instructions before completing this part.*		(1) Beneficiaries' (see instructions)	(2) Estate's or trust's	(3) Total
13 Net short-term gain or (loss)	13			
14 Net long-term gain or (loss):				
a Total for year	14a		318,909.	318,909.
b Unrecaptured section 1250 gain (see line 18 of the worksheet)	14b			
c 28% rate gain	14c			
15 Total net gain or (loss). Combine lines 13 and 14a ►	15		318,909.	318,909.

Note: *If line 15, column (3), is a net gain, enter the gain on Form 1041, line 4 (or Form 990-T, Part I, line 4a). If lines 14a and 15, column (2), are net gains, go to Part V, and do not complete Part IV. If line 15, column (3), is a net loss, complete Part IV and the* ***Capital Loss Carryover Worksheet****, as necessary.*

Part IV Capital Loss Limitation

16 Enter here and enter as a (loss) on Form 1041, line 4 (or Form 990-T, Part I, line 4c, if a trust), the smaller of:			
a The loss on line 15, column (3) or b $3,000	16		

Note: *If the loss on line 15, column (3), is more than $3,000, or if Form 1041, page 1, line 22 (or Form 990-T, line 34), is a loss, complete the* ***Capital Loss Carryover Worksheet*** *in the instructions to figure your capital loss carryover.*

Part V Tax Computation Using Maximum Capital Gains Rates

Form 1041 filers. Complete this part **only** if both lines 14a and 15 in column (2) are gains, or an amount is entered in Part I or Part II and there is an entry on Form 1041, line 2b(2), **and** Form 1041, line 22, is more than zero.

Caution: *Skip this part and complete the* ***Schedule D Tax Worksheet*** *in the instructions if:*

- *Either line 14b, column (2) or line 14c, column (2) is more than zero, or*
- *Both Form 1041, line 2b(1), and Form 4952, line 4g are more than zero.*

Form 990-T trusts. Complete this part **only** if both lines 14a and 15 are gains, or qualified dividends are included in income in Part I of Form 990-T, **and** Form 990-T, line 34 is more than zero. Skip this part and complete the **Schedule D Tax Worksheet** in the instructions if either line 14b, column (2) or line 14c, column (2) is more than zero.

17 Enter taxable income from Form 1041, line 22 (or Form 990-T, line 34)			17	208,859.		
18 Enter the **smaller** of line 14a or [illegible] column (2) but not less than zero	18	318,909				
19 Enter the estate's or trust's qualified dividends from Form 1041, line 2b(2) (or enter the qualified dividends included in income in Part I of Form 990-T)	19					
20 Add lines 18 and 19	20	318,909.				
21 If the estate or trust is filing Form 4952, enter the amount from line 4g; otherwise, enter -0- ►	21	0.				
22 Subtract line 21 from line 20. If zero or less, enter -0-			22	318,909.		
23 Subtract line 22 from line 17. If zero or less, enter -0-			23	0.		
24 Enter the **smaller** of the amount on line 17 or $2,400			24	2,400.		
25 Is the amount on line 23 equal to or more than the amount on line 24?						
☐ **Yes.** Skip lines 25 and 26; go to line 27 and check the 'No' box.						
☒ **No.** Enter the amount from line 23			25	0.		
26 Subtract line 25 from line 24			26	2,400.		
27 Are the amounts on lines 22 and 26 the same?						
☐ **Yes.** Skip lines 27 thru 30; go to line 31. ☒ **No.** Enter the smaller of line 17 or line 22			27	208,859.		
28 Enter the amount from line 26 (If line 26 is blank, enter -0-)			28	2,400.		
29 Subtract line 28 from line 27			29	206,459.		
30 Multiply line 29 by 15% (.15)					30	30,969.
31 Figure the tax on the amount on line 23. Use the 2012 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)					31	
32 Add lines 30 and 31					32	30,969.
33 Figure the tax on the amount on line 17. Use the 2012 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)					33	72,035.
34 **Tax on all taxable income.** Enter the **smaller** of line 32 or line 33 here and on Form 1041, Schedule G, line 1a (or Form 990-T, line 36)					34	30,969.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)

► Attach to Form 1040, 1040NR, or Form 1041.

► Information about Schedule E and its separate instructions is at *www.irs.gov/form1040.*

OMB No. 1545-0074

2012

Attachment Sequence No. 13

Name(s) shown on return: ZIPPORA STAHL ESTATE

Your social security number: 27-6756432

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2012 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

1a Physical address of each property (street, city, state, ZIP code)

A CHINO, CA

B

C

1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	Fair Rental Days	Personal Use Days	QJV
A 8	A			
B	B			
C	C			

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Statement 5

Income:	Properties:	A	B	C
3 Rents received	3	19,343.		
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9	552.		
10 Legal and other professional fees	10			
11 Management fees	11	788.		
12 Mortgage interest paid to banks, etc (see instructions)	12			
13 Other interest	13			
14 Repairs	14	6,471.		
15 Supplies	15			
16 Taxes	16	-19,135.		
17 Utilities	17	1,123.		
18 Depreciation expense or depletion	18			
19 Other (list) ► See Stm 6	19	10.		
20 Total expenses. Add lines 5 through 19	20	-6,191.		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	25,534.		
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22			
23a Total of all amounts reported on line 3 for all rental properties	23a	19,343.		
b Total of all amounts reported on line 4 for all royalty properties	23b			
c Total of all amounts reported on line 12 for all properties	23c			
d Total of all amounts reported on line 18 for all properties	23d			
e Total of all amounts reported on line 20 for all properties	23e	-6,191.		
24 **Income.** Add positive amounts shown on line 21. **Do not** include any losses	24			25,534.
25 **Losses.** Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25			
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26			25,534.

Form **8582**

Department of the Treasury Internal Revenue Service (99)

Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

OMB No. 1545-1008

2012

Attachment Sequence No. **88**

Name(s) shown on return: ZIPPORA STAHL ESTATE

Identifying number: 27-6756432

Part I 2012 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c		1d	

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b		2c	

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a	25,534.	
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b		
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c		
d	Combine lines 3a, 3b, and 3c		3d	25,534.

4	Combine lines 1d, 2c, and 3d. If this line is zero or more, skip Part II and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2c, or 3c. Report the losses on the forms and schedules normally used	4	25,534.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the **smaller** of the loss on line 1d or the loss on line 4		5	
6	Enter $150,000. If married filing separately, see the instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs)	7	183,925.	
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see instructions		9	
10	Enter the **smaller** of line 5 or line 9		10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2012.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

Caution: *The worksheets must be filed with your tax return. Keep a copy for your records.*

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ►					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ►			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
RENTAL DAIRY	25,534.			25,534.	
Total. Enter on Form 8582, lines 3a, 3b, and 3c ►	25,534.				

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ►			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Total ►			1.00	

Worksheet 6 – Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Total ►				0.

Worksheet 7 – Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.
Name of activity . . .					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.

Statement 1
Form 1041, Line 1
Interest Income

FIRST CLEARING, LLC	$	8,376.
LONG VIEW DAIRY		15,076.
WELLS FARGO BANK		578.
Total	$	24,030.

Statement 2
Form 1041, Line 11
Taxes

State and Local Taxes	$	100,010.
Total	$	100,010.

Statement 3
Form 1041, Line 15(a)
Other Deductions

INSURANCE	$	477.
OFFICE EXPENSE		437.
Net Operating Loss Carryover		8,247.
Total	$	9,161.

Statement 4
Form 1041, Other Information, Line 8
Explanation for the Delay in Closing the Estate

ADDITIONAL TIME IS REQUIRED TO COMPLETE ALL ESTATE MATTERS AND SATISFY BENEFICIARY CONCERNS.

Statement 5
Schedule E, Part I - CHINO, CA
Other Type of Property

Type of Property: DAIRY FARM

Statement 6
Schedule E, Line 19 - RENTAL DAIRY
Other Rental and Royalty Expenses

BANK FEES	$	10.
Total	$	10.

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Attorneys for the Idaho State Tax Commission

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC1500106 **MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Idaho State Tax Commission, by and through its counsel, pursuant to Rule 56(c), Idaho Rules of Civil Procedure, and submits its memorandum in support of its cross motion for summary judgment.

INTRODUCTION

Although this is an income tax case, the principle issue is one of basic statutory interpretation. The parties have agreed upon the material facts in this case. *See* Joint Stipulation of Facts, filed herewith. There remains only one legal issue.

Idaho law requires taxpayers to report the identical sum of "taxable income" on their Idaho tax return as they do on their Federal return. The legal issue is whether the Petitioner, the Estate of Zippora Stahl (Estate), should be allowed to report one sum as its taxable income in its *Federal* tax return, but a different number in its *Idaho* tax return. The Estate would like to report different taxable income numbers in their various tax returns in order to pay less tax. The Estate justifies its incongruent reporting because of an incorrect reading of the definition of "taxable income" to include only those statutory provisions contained within the four corners of the Internal Revenue Code.

However, the Respondent, Idaho State Tax Commission (Tax Commission), determined below that the Estate must report identical sums in its tax returns. For the reasons stated below, the Estate should be required to follow Idaho law and report the identical sum in its Idaho return as it did in its Federal return.

STANDARD OF REVIEW

Summary judgment shall be granted if the court determines that "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Bonz v. Sudweeks, 119 Idaho 539, 541 (1991).

The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and the Court must evaluate each party's motion on its own merits. Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp., 136 Idaho 233, 235 (2001).

The Court must take care in each instance to draw all reasonable inferences against the party whose motion is under consideration. Bear Island Water Ass'n, Inc. v. Brown, 125 Idaho 717, 721 (1994). In instances where the parties file cross motions for summary judgment and rely on the same facts, issues, and theories, "the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment." Intermountain Forest, 136 Idaho at 235, 31 P.3d at 924.

A summary judgment procedure is appropriate in a district court appeal of an administrative decision. Beker Industrial, Inc. v. Georgetown Irrigation District. 101 Idaho 187, 610 P.2d 546 (1980). The standard of review for tax cases at the district court level is as follows:

> A taxpayer may appeal a determination by the Commission by filing a complaint against the Commission in district court. The case is to proceed as a de novo bench trial. A deficiency determination issued by the Commission is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous.

Parker v. Idaho State Tax Comm'n, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (internal citations omitted). The decision of the Tax Commission should be presumed to be correct in this case, and the Estate must overcome that presumption.

BACKGROUND

This case involves a question of whether the Estate may calculate its taxable income in one way for Federal purposes, and another way for Idaho purposes. This short background provided below is a condensed version of the facts from the Joint Stipulation of Facts filed herein:

When Zippora Stahl, an Idaho resident, died in 2010, she held substantially appreciated real estate located in Chino, California (the Chino property).[1] The Personal Representative of the Stahl Estate pursued the sale of the Chino property in an ancillary probate proceeding.[2] In that proceeding, the value of the Chino property was determined to be $16,000,000 at the time of Stahl's death; in December 2012 the Personal Representative sold the Chino property for $16,318,909.[3]

Later, when the Estate's 2012 income tax returns were prepared, the Personal Representative calculated the Estate's Federal Income Tax pursuant to § 301(c) of U.S. Public Law 111-312 ("Public Law 111-312").[4] This law allowed the Estate to elect to use a modified carryover basis for the assets owned by Stahl at her death for Federal Income Tax Purposes (which resulted in a higher income tax liability), in exchange for not having to pay the Federal Estate Tax.[5] In tax law, the term "basis" means the value assigned to a taxpayer's investment in property, and is a critical determination used for computing the taxpayer's gain or loss when the property is transferred (following the formula of: Sale Price minus Basis equals Taxable Gain). *See* Black's Law Dictionary, 8th ed., 161. Likewise, on its 2012 Idaho income tax return, the Estate used the same modified carryover basis for the appreciated property as was used on the Estate's Federal tax return.[6]

The Idaho State Tax Commission reviewed the Estate's 2012 tax filings and concluded that the Estate had incorrectly calculated a credit for taxes paid in another state, and informed the

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[1] Joint Stipulation of Facts, at 1-2, ¶¶ 1-2.
[2] Joint Stipulation, at 1-2, ¶¶ 1, 3.
[3] Joint Stipulation, at 2, ¶¶ 3-4.
[4] Joint Stipulation, at 2, ¶ 5; Public Law 111-312 is known as the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" PL 111-312, December 17, 2010, 124 Stat 3296.
[5] Joint Stipulation, at 2, ¶ 5.
[6] Joint Stipulation, at 2, ¶ 6.

Estate that it owed an additional tax in the amount of $20,629, together with penalties and interest.[7]

However, a few months later, the Estate attempted to amend its Idaho 2012 tax return.[8] (The Estate did not amend its Federal return, as will be seen below.) In that amended Idaho return, the Estate computed the gain from the sale of the Chino property to reflect a "stepped-up" basis[9] by applying Internal Revenue Code § 1014(a), which resulted in significantly less reportable Idaho gain. This is the I.R.C. provision that would have applied if the Estate had not chosen to make the Public Law election. The Estate did this based on an interpretation of the definition of "taxable income" under Idaho law that would not incorporate the very Public Law election that they used in their Federal return. Because of this disparate calculation, the Estate asserted its claim for an Idaho refund in the amount of $1,026,435.[10]

Here, in table form is a comparison of how the Estate is reporting different sums of taxable gain on the sale of the Chino property[11]:

	SALE PRICE	BASIS	TAXABLE GAIN
ORIGINAL 2012 FEDERAL & IDAHO RETURNS	$16,339,000	$1,457,341	$14,881,659
		↕	
AMENDED 2012 IDAHO RETURN	$16,318,909	$16,000,000 *stepped up*	$318,909

[7] Joint Stipulation, at 2-3, ¶ 7.
[8] Joint Stipulation, at 3, ¶ 8.
[9] Joint Stipulation, at 3, ¶ 8.
[10] Joint Stipulation, at 3, ¶ 8.
[11] See Joint Stipulation, at 2-3, ¶¶5, 8.

The Tax Commission refused to accept the Estate's amended Idaho return with the different numbers of taxable income, as Idaho law requires taxpayers to use the identical sum of taxable income in their *Idaho* return as they did in their *Federal* return.[12] The Estate has now appealed the Tax Commission's decision to this Court.

ARGUMENT

1. The Tax Commission's Decision should be affirmed because Idaho law requires the Estate to report its taxable income the same on its Idaho tax return as on its Federal return.

Idaho law requires a taxpayer to report identical numbers of "taxable income" in its Idaho tax return as is reported in its Federal tax return. Idaho Code § 63-3002. Likewise, the basis used for computing a taxpayer's Idaho income tax liability should be the same as that used for federal income tax purposes. The Estate contends that, for Idaho income tax purposes, the basis of the Chino property received from a decedent who died in 2010 should be "stepped up," even though they were not stepped up for federal income tax purposes. In its original returns, the Estate took advantage of Public Law 111-312 which amends the Internal Revenue Code provision that allows a taxpayer to elect to use a modified basis. The Estate used the modified basis for the Chino property in exchange for not having to pay any Federal Estate Tax.

The Estate seeks to calculate its taxable income for Federal purposes by applying Public Law 111-312 as an amendment to the requirements of the Internal Revenue Code, but then turn around and deny the applicability of that Public Law when computing Idaho taxable income for the stated reason that it is not somehow an amendment to the Internal Revenue Code. The Estate relies on an interpretation of the definition of "taxable income" that ignores their application of

[12] Joint Stipulation, at 2, ¶ 9.

the Public Law. Based on this interpretation of the statute, the Estate is able to report a much larger basis to Idaho, resulting in significantly less taxable gain, and thus, much less Idaho income tax to pay.

Identical "Taxable Income"

Idaho law provides that the whole Idaho Income Tax Act (Idaho Code §§ 63-3001- through 63-3089) is built on the principle that a taxpayer's "taxable income" reported to Idaho should be the *identical* amount that the taxpayer reported to the Internal Revenue Service. The chief code section in this regard is Idaho Code § 63-3002. Although it is lengthy, Section 3002 is of paramount importance in resolving this case, and so is quoted here in its entirety:

> DECLARATION OF INTENT. It is the intent of the legislature by the adoption of this act [the Idaho Income Tax Act], insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States

Idaho Code § 63-3002 (emphasis added).

Thus, the Idaho Legislature's intent is to make the Idaho Income Tax Act piggy back onto the Federal tax reporting system. Idaho Code § 63-3002 does this by making the amount of

taxable income reported to the Internal Revenue Service the same as what gets reported to the state of Idaho. After an Idaho taxpayer's federal taxable income sum is established, the provisions of the Idaho Income Tax Act are then applied.

By its own language, Idaho Code § 63-3002 "does not incorporate by reference all provisions of the federal Internal Revenue Code into Idaho law," Lockheed Martin Corp. v. Idaho State Tax Com'n, 142 Idaho 790, 796, 134 P.3d 641, 647 (2006), however, the plain meaning of section 3002, Title 63, Idaho Code, is to apply the various provisions of and amendments to the Internal Revenue Code in order to achieve the result of having one amount, called "taxable income." Thus, "[o]ur legislature intended the provisions of the Idaho Income Tax Act to be identical to the Internal Revenue Code, in so far as possible. Idaho Code § 63-3002." Parsons v. Idaho State Tax Comm'n, Dep't of Revenue & Taxation, 110 Idaho 572, 575, 716 P.2d 1344, 1347 (Ct. App. 1986) (emphasis added). The starting point for Idaho tax purposes is "taxable income," and it is to be "identical" to the amount reported to the Internal Revenue Service.

Using this disparate reporting scheme, the Estate is attempting to drastically reduce the amount of tax owed on the sale of the Chino property. The Estate is claiming the benefit of the Public Law 111-312 election to avoid any Estate tax, but then renouncing the applicability of that Public Law election when it comes to the Idaho return, and thereby hoping to significantly lower its tax liability. This is incongruent with the provisions of Idaho law. A taxpayer "shall" report to Idaho the "identical sum" of income that it reported to the Internal Revenue Service. Idaho Code § 63-3002. This result – using only one "taxable income" sum – is required under Idaho

law. The Estate must use the same basis and taxable income in its Idaho return as it did in its Federal return.

2. The definition of "taxable income" includes off-Code amendments made to the Internal Revenue Code.

The principal issue is whether the term "Internal Revenue Code" means only the actual text printed within the volume of federal law known as Title 26, U.S.C. (i.e., the Internal Revenue Code). Idaho law indicates that Public Law 111-312 is an amendment to and therefore included within the meaning of the "Internal Revenue Code." Moreover, the very language of Public Law 111-312 shows that it is an amendment to, and therefore included within the meaning of the "Internal Revenue Code." The Estate's taxable income sum should reflect the definition contained in Idaho law as well as included within the Public Law itself.

a. The definition of "Internal Revenue Code" in Idaho Code § 63-3004 includes amendments or changes to the Internal Revenue Code such as U.S. Public Law 111-312.

The main reason the definition of "Internal Revenue Code" is at issue is because the term "taxable income" is defined as "federal taxable income as determined under the Internal Revenue Code." Idaho Code § 63-3011B (emphasis added). The Estate argues that only the actual text printed in the volume of federal law known as Title 26, U.S.C. constitutes the "Internal Revenue Code." And therefore, Public Law 111-312 and the tax election it contains do not apply when figuring Idaho taxable income.

Upon first glance, one might think that the term "Internal Revenue Code" would mean only the actual text printed within that Code, Title 26, U.S.C. However, the legal definition of "Internal Revenue Code" – as defined in Idaho law – is more *expansive* than that. The term

"Internal Revenue Code" is defined for Idaho income tax purposes for the taxable year in this particular way:

> INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012.
> (b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

Idaho Code § 63-3004 (2012) (emphasis added). For purposes of Idaho income tax, "Internal Revenue Code" includes not only everything contained within Title 26 of the U.S. Code relating to income and basis, but also, additions, deletions, and everything that has amended it. (The Estate tacitly recognizes that the Internal Revenue Code "as amended, and in effect on the first day of January 2012" incorporated the Public Law 111-312, as the Estate made an election as to the basis of the Chino property.)

A court's "primary duty in interpreting a statute is to give effect to the legislative intent as ascertained from the statutory language." Ag Servs. of Am., Inc. v. Kechter ex rel. Kechter, 137 Idaho 62, 64, 44 P.3d 1117, 1119 (2002). A court is to interpret a statute "in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute." Sweitzer v. Dean, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990) (internal citation omitted). Likewise, Idaho courts will not construe a statute in a way which makes mere surplusage of provisions included therein. Id. In this case, this Court must interpret the meaning of the term "Internal Revenue Code" as "amended" in Idaho Code § 63-3004, and it must give effect to all the words of that statute.

Black's Law Dictionary, 8th ed., defines the word "amendment" as a "revision or addition." Id., 89. Said another way, an amendment is "a change" that is made "by addition, deletion, or correction; especially an alteration in wording." Id. Thus, the primary part of the definition of "amendment" is actually a revision or change. "Amendment" can also mean "addition" or "deletion."

However, in this case, the Idaho Legislature indicates that the definition of "Internal Revenue Code" includes all three terms: additions, deletions, *and* amendments. This Court should not construe Idaho Code § 63-3004 in a way which makes mere surplusage of provisions included therein. Sweitzer, 118 Idaho at 572, 798 P.2d at 31. If the Idaho Legislature chose to use the words additions *and* amendments, then the meaning of the word "amendment" cannot mean merely an "addition"; the word "amendment" as used here must mean a revision or change. This Court should give effect to the Legislative intent as determined from the statute's language. The Legislature's use of the word "amended" cannot mean merely new words (additions) or strikethroughs (deletions) within Title 26, U.S.C. The word "amended" must mean other "changes" or "revisions" to Title 26, U.S.C. This includes Public Laws in effect that specifically change or revise provisions of Title 26, U.S.C. This is especially true where the language of the Public Laws indicates that it "amends" the Internal Revenue Code.

A well-known example of this general idea can be seen by looking at the U.S. Constitution and the U.S. Bill of Rights. The first ten Amendments to the U.S. Constitution – constituting the Bill of Rights – are not literal additions of or deletions to the text used within the four corners of the U.S. Constitution; the Bill of Rights consists of constitutional amendments that change or revise the effect of the Constitution's original provisions. As amendments, they

are not of any less force or significance. Rather, they are incorporated into and are of equal power as the articles within the U.S. Constitution. Similarly, Public Laws altering the effect and reach of the provisions of the Internal Revenue Code are "amendments" to that Code. Such Public Laws are within the meaning of "Internal Revenue Code" in Idaho Code § 63-3004.

b. The very language of the Public Law at issue here states that it "amends" the Internal Revenue Code.

In addition to the above, there is another reason why the definition of "Internal Revenue Code" includes Public Law 111-312. That reason is found directly within the provisions of Public Law 111-312 itself. The plain meaning of the provisions make it clear that Public Law 111-312 is an amendment to the Internal Revenue Code. Public Law 111-312 consistently indicates itself that it directly alters the effect of the Internal Revenue Code.

First, references to the word "amendments" within Public Law 111-312 are specifically to be understood as amendments *to the Internal Revenue Code*. Section 1(b) of Public Law 111-312 states:

> *Amendment of 1986 Code* – Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

PL 111-312 (emphasis added).

Moreover, Section 301(b) of Public Law 111-312 provides: "CONFORMING AMENDMENT.--On and after January 1, 2011, paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 is amended to read as such paragraph would read if section 521(b)(2) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted." PL 111-312 (emphasis added).

In Section 301(c), PL 111-312 – the specific provision that the Estate relied for the election – explicitly revises and changes provisions of the Internal Revenue Code. Section 301(c) provides:

> SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.--Notwithstanding subsection (a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

PL 111-312 (emphasis added). The Idaho definition of "taxable income" includes amendments to the Internal Revenue Code; the very language of the Public Law 111-312 itself provides that it is an amendment to the Internal Revenue Code.

The Internal Revenue Code, as in effect at the end of 2010 and 2012, allowed the Estate to elect the modified carryover basis in determining the basis of the assets received from the decedent. While the verbiage of the election in question was not incorporated within the four corners of the Internal Revenue Code, Public Law 111-312 is an amendment no less than if it had been so incorporated. Public Law 111-312 is an amendment to the Internal Revenue Code and is therefore to be included when calculating Idaho "taxable income."

CONCLUSION

The Estate must report its taxable income the same on its Idaho tax return as it did on its Federal return. Summary judgment should be entered in favor of the Tax Commission and

against the Estate. The Tax Commission's Decision ordering the Estate to pay tax ($20,190), penalty ($304), and interest ($1,238, computed to December 31, 2014) for taxable year 2012, should be affirmed.

DATED this 26 day of June 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of June 2015, I caused to be served a true and correct copy of the within and foregoing Tax Commission's MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION FOR SUMMARY JUDGMENT upon Petitioner indicated below:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	2015 - 00106 CASE NO. CV-OC-~~00106~~ PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, and moves this Court for a summary adjudication ruling that the Estate received a step-up in the Idaho income tax basis of appreciated real estate located in Chino, California. This Motion is supported by the accompanying Memorandum, the Affidavit of Ralph V. Seep, and the pleadings and files of record herein.

DATED this 26th day of June 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
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ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC-2015-00106 **TAX COMMISSION'S MOTION TO STRIKE (AFFIDAVIT OF RALPH V. SEEP)**

COMES NOW the Respondent, Idaho State Tax Commission (Tax Commission), in the above-captioned matter, by and through its attorneys of record, and hereby moves this Court, pursuant to Rule 56(c) of the Idaho Rules of Civil Procedure, and Rule 103 of the Idaho Rules of Evidence, for its order striking the Affidavit of Ralph V. Seep (dated April 23, 2015; filed herein June 26, 2015). The Affidavit contains inadmissible evidence; it does not establish a foundation of the affiant as an expert; and it was also improperly filed, both against the agreement of the parties and late-filed.

This motion is supported by the memorandum filed in conjunction with it.

DATED this 2 day of July 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
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CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of July 2015, I caused to be served a true and correct copy of the within and foregoing TAX COMMISSION'S MOTION TO STRIKE (AFFIDAVIT OF RALPH V. SEEP) upon Petitioner indicated below:

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ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC-2015-00106 **MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION TO STRIKE (AFFIDAVIT OF RALPH V. SEEP)**

COMES NOW the Respondent, Idaho State Tax Commission (Tax Commission), in the above-captioned matter, by and through its attorneys of record, and files this memo in support of the Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep). The Affidavit filed by the Petitioner, Estate of Zippora Stahl (Estate), contains inadmissible evidence; it does not establish a foundation of the affiant as an expert; and it was also improperly filed, both against the agreement of the parties and late-filed.

1. **The Affidavit of Ralph V. Seep should be stricken because it contains inadmissible evidence, in the form of legal conclusions.**

The Estate's Affidavit of Ralph V. Seep contains inadmissible evidence. I.R.C.P. 56(e) requires that supporting affidavits for motion for summary judgment "be made on personal knowledge" and "set forth such facts as would be admissible in evidence . . . ." Where an affidavit merely states conclusions and does not set out facts, such supporting affidavit is inadmissible to show the absence of a genuine issue of material fact. Casey v. Highlands Ins. Co., 100 Idaho 505, 508, 600 P.2d 1387, 1390 (1979).

In this case, this Court is called upon to determine the legal effect of the existence of Section 301(c) of U.S. Public Law 111-312; this Court must decide the main legal question whether this Public Law legally "amends" the Internal Revenue Code. That is the crux of the issue here. The principal issue is whether the term "Internal Revenue Code" means only the actual text printed within the volume of federal law known as Title 26, U.S.C. (i.e., the Internal Revenue Code).

Instead, the Affidavit of Ralph V. Seep would usurp this Court's job of making a legal conclusion. In it, Mr. Seep pronounces that Section 301(c) of U.S. Public Law 111-312 "did not amend the Internal Revenue Code of 1986, Title 26 of the United States Code." Affidavit at 2, ¶ 3. The Affidavit then concludes that "[t]hese provisions are not technically part of the Internal Revenue Code." Id.

First, the Estate does not actually need an affidavit to tell the Court that the text of Public Law 111-312 is not technically contained within that volume of U.S. Code Title 26. But more importantly, Mr. Seep states that Public Law 111-312 does not "amend" the Internal Revenue

Code. This is an improper legal conclusion or conjecture and is not admissible evidence. An affidavit must contain evidence "as would be admissible in evidence." Rule 56(e), I.R.C.P. Mr. Seep's statement that Public Law 111-312 does not amend the Internal Revenue Code is not a fact. This is a legal conclusion; the affiant cannot supplant this Court's determinations of what the law indicates.

2. The Affidavit of Ralph V. Seep should also be stricken because there is no foundation established to show Mr. Seep's qualifications as an expert.

Not only does the Affidavit contain inadmissible legal conclusions, to the extent Mr. Seep's testimony constitutes "expert" testimony, it is also inadmissible. "The foundation for establishing a witness' qualifications as an expert must be offered before his testimony will be received in evidence." State v. Johnson, 119 Idaho 852, 855, 810 P.2d 1138, 1141 (Ct. App. 1991) (emphasis added). No such foundation has been provided here.

In Mr. Seep's Affidavit he states, "I am the Law Revision Counsel of the U.S. House of Representatives." Beyond this statement we know nothing about who Mr. Seep is or what his expert qualifications are. We do not know what his education or background is. We do not know how long he has worked for the Law Revision Counsel. We do not know what the Law Revision Counsel is. We do not know if the Law Revision Counsel is an organization with multiple employees or if Mr. Seep alone is the sole individual that constitutes the Law Revision Counsel. There are many more similar questions that remain unanswered about Mr. Seep's qualifications to provide expert testimony on the subjects addressed in his affidavit.

In general, a court must determine the admissibility of evidence prepared by an expert witness by looking at foundational issues, before ruling on the motion for summary judgment.

Hines v. Hines, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997). If the Court considers the Affidavit of Ralph V. Seep to be expert testimony, then it should be stricken from the record because no foundation has been laid to establish Mr. Seep's qualifications as an expert.

3. If the Affidavit is not stricken, justice dictates that the July 23, 2015 hearing on the motions for summary judgment be vacated.

Not only is the Affidavit of Ralph V. Seep inadmissible, it was improper for the Estate to have filed it in the first place. By filing the Affidavit, the Estate has procedurally disadvantaged the Tax Commission, because it goes contrary to the agreement of parties and is late. Here's why:

In this case-as is common in many civil actions-the parties agreed that this case would be a good one to dispose of by summary judgment. The parties had an understanding as to a clean and easy process to get this matter before this Court. The parties worked on and agreed to two stipulations filed herein on June 26, 2015:

(1) **Joint Stipulated Briefing Schedule**; and

(2) **Joint Stipulation of Facts.**

In the Joint Stipulated Briefing Schedule, both parties set forth an agreed-upon procedure for filing cross motions for summary judgment. The Joint Stipulated Briefing Schedule provides that each party's motion would be accompanied by one brief; and one joint stipulation of facts on or before June 26, 2015. Importantly, the Joint Stipulated Briefing schedule contemplated that each party would then file and serve one answering brief on or before July 17, 2015. Nothing is provided for filing any affidavits, either with the Stipulation of Fact, or after the briefs were filed.

In this way, the parties' Joint Stipulated Briefing Schedule altered the normal process contemplated in Rule 56, I.R.C.P. Under Rule 56(c), I.R.C.P., a party files a motion for summary judgment at least 28 days before the hearing, with whatever evidence that party chooses. Then, the opposing party is given time to receive the evidence, and time to file its own evidence in return, at least 14 days before the hearing. I.R.C.P. 56(c). In this way, Rule 56(c). I.R.C.P. gives time to respond to the party against whom evidence is filed.

Instead, the schedule that the parties agreed to was a truncated filing schedule. The parties agreed to only one submission of briefs and a single stipulation of facts, with only one reply brief. So, by filing the Affidavit of Ralph V. Seep, the Estate has altered the Joint Stipulated Briefing Schedule, by filing an additional affidavit.

Not only that, but in the second document that the parties agreed to, the Joint Stipulation of Facts, after setting forth the stipulated facts, the parties agreed that if the Tax Commission prevailed on summary judgment, there would be no remaining issues. The parties also agreed that if the Estate prevailed on summary judgment, there would be one and only one remaining issue as to any fact. In all, the parties agreed that there were no genuine issues as to any material fact, except for one (and only one) fact issue related to valuation. In essence, the parties agreed that the Joint Stipulation of Facts provided all of the material facts.

Here is exactly what the parties agreed to:

> 1. If the Estate prevails on summary judgment on the major legal issues, **there will be one factual issue yet to be resolved**. If the Estate prevails, the applicable provisions of the Internal Revenue Code would require the Estate's income tax basis in the Chino property to be equal to the fair market value of the Chino property on the date of Stahl's death. The [singular] factual issue yet to be resolved will be: the fair market value of the Chino property on the date of Stahl's death. The parties agree to work together to establish an agreed-upon fair market value of the Chino property at the time of death, if needed.

2. If the Tax Commission prevails on summary judgment, there will be ***no remaining issues as to any material fact***, and a complete summary judgment may issue.

Joint Stipulation of Facts, pp. 3-4 (emphasis added).

In any case, the parties filed a Joint Stipulation of Fact. The title of that document reflects what that document is: a stipulation of the facts. It shows this Court what the facts of the case are. The Estate doesn't get a second shot at that. This is especially true where the Affidavit is dated well before the Stipulation was filed. The Estate apparently had this Affidavit in its possession at the very time that the parties were putting together their stipulation of fact. By filing the Affidavit, the Estate has now augmented the factual record, and the parties had no agreement to do so.

Taken together, the Joint Stipulated Briefing Schedule and the Joint Stipulation of Facts provide that affidavits were not part of the contemplated process here. Even if they were, the filing procedure under Rule 56 fully applies; the Estate should also be held to the time standards contained within Rule 56. Under that standard, the Estate's Affidavit was filed less than the required 28 days before the hearing and should be stricken for that reason.[1] Without time to consider its response to the late-filed and improper Affidavit, the Tax Commission is prejudiced.

[1] Rule 56(c), I.R.C.P. requires a party to serve an affidavit in support of a motion for summary judgment "at least twenty eight (28) days before the time fixed for the hearing." Id. The hearing on the pending motions for summary judgment is set for July 23, 2015. The Estate was required to serve any affidavit on the Tax Commission no later than June 25, 2015. In this case, Estate served its Affidavit of Ralph V. Seep on the afternoon of Friday, June 26, 2015. This was less than 28 days before the hearing, in violation of Rule 56(c), I.R.C.P. The time limits of Rule 56(c), I.R.C.P. are in place in order to give the opposing party an adequate and fair opportunity to respond. Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker, 133 Idaho 1, 4, 981 P.2 d 236, 239 (1999). A court may shorten the time limits in Rule 56(c), but only for good cause shown and only so long as the other side is not prejudiced. Id. If the Estate is allowed to file this late Affidavit of Ralph V. Seep, then the Tax Commission is given less than the 14 days within which to decide how it will respond to the evidence. This deprives the Tax Commission of the opportunity to respond as contemplated within the rules. If the deadlines are altered, Rule 56(c), I.R.C.P. clearly provides that the Court "may impose costs, attorney fees and sanctions against a party or the party's attorney, or both."

The Affidavit should be stricken. But if not, this Court should vacate the hearing and allow the Tax Commission time to depose Mr. Seep and determine if it needs its own fact witness.

CONCLUSION

For all these reasons, this Court should strike the Affidavit of Ralph V. Seep. It should be excluded from consideration in the summary judgment proceedings.

Should this Court not strike the Affidavit, the Tax Commission moves this Court to vacate the summary judgment hearing set for July 23, 2015.

Because the Affidavit was late-filed, an expedited hearing and oral argument is requested.

DATED this 2 day of July 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of July 2015, I caused to be served a true and correct copy of the within and foregoing TAX COMMISSION'S MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION TO STRIKE (AFFIDAVIT OF RALPH V. SEEP) upon Petitioner indicated below:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-00106 PLAINTIFF'S RESPONSE IN OBJECTION TO MOTION TO STRIKE

I. INTRODUCTION

Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, hereby submits this Response in Objection to the Motion to Strike the Affidavit of Ralph V. Seep filed by the Idaho State Tax Commission (the "Commission") in the above captioned matter.

II. FACTS

Zippora Stahl died in 2010, owning an interest in certain real property (the "Chino property") with an estimated fair market value of $16,000,000. *See* (Joint Stipulation of Facts, filed in the above captioned matter on June 26, 2015 ("Joint Stipulation of Facts"), ¶¶ 1-3.) The Estate sold the Chino property in 2012 for $16,318,909. (Joint Stipulation of Facts, ¶ 4.) Ultimately, the central dispute between the Estate and the Commission arose over the impact of the Estate's election pursuant to § 301(c) of Public Law 111-312 (the "Public Law Election"), which allowed the Estate to opt out of paying Federal Estate Tax in exchange for taking (for Federal Income Tax Purposes) a carryover basis in the Chino property of only $1,457,341, rather than the $16,000,000 stepped-up federal basis under § 1014 of the Internal Revenue Code of 1986. (Joint Stipulation of Facts, ¶ 5.)

Even though the Public Law Election was never codified in the Internal Revenue Code of 1986, the Commission takes the position that sections 63-3011B and 63-3004 of the Idaho Code, which compute Idaho taxable income by incorporating by reference the Internal Revenue Code of 1986, also incorporate the Public Law Election. *See generally* (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 6-13.) Under this reasoning, the Commission asserts that the Estate's use of the Public Law Election's carryover basis for Federal Income Tax purposes requires the Estate to also use a carryover basis for Idaho Income Tax Purposes.

The Estate contests the Commission's reasoning on this issue, *inter alia*, on the grounds that sections 63-3011B and 63-3004 of the Idaho Code require the Estate to determine its Idaho taxable income pursuant to the Internal Revenue Code of 1986, which has never included the Public Law Election in any of the statutes contained in Title 26 of the United States Code. *See generally* (Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment, pp. 6-13.) Rather, the Estate's Idaho taxable income should be determined with reference to the codified provisions of the Internal Revenue Code of 1986 (notably § 1014) set forth in Title 26 of the U.S. Code which increase the Estate's basis in Mrs. Stahl's property to its fair market value at the time of her death. The distinction is significant because applying a carryover basis in the Chino property

(as the Commission insists) results in Idaho taxable income to the Estate of almost $15 million, whereas a stepped-up basis in the Chino property (as the plain language of the Internal Revenue Code and the Idaho Income Tax Act requires) results in an estimated taxable gain of $318,909.

As discussion progressed between the Estate and the Commission with respect to the Estate's refund claim, the Estate's counsel participated in a telephone conference with the Commission's Tax Policy Specialist, Jim Gunter, who postulated that the absence of the Public Law Election from the Internal Revenue Code of 1986 was legally insignificant based on speculation that the Office of Law Revision Counsel of the U.S. House of Representatives held largely unfettered discretion to arbitrarily withhold public law provisions from codification in the United States Code. (Aff. of Marshall, ¶ 2.) Following that discussion, counsel for the Estate inquired of Mr. Ralph V. Seep, the Law Revision Counsel of the U.S. House of Representatives ("Mr. Seep"), regarding the relationship between the Public Law Election and the Internal Revenue Code of 1986. Mr. Seep responded via email and explained:

> The Internal Revenue Code of 1986 is restated as Title 26 of the United States Code but is not a positive law title of the United States Code. However, the sections of Title 26 of the United States Code are identical to those of the Internal Revenue Code of 1986. You are correct that only Congress can amend the Internal Revenue Code.
>
> Congress enacted the Internal Revenue Code of 1954 as a Code by the act of Aug. 16, 1954, ch. 736, 68A Stat. 3. Congress later revised and redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986 by Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2095.
>
> [The Public Law Election] is not an amendment to, or part of, the Internal Revenue Code of 1986. It is a freestanding provision in Pub. L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

(Aff. of Marshall, ¶ 3, **Appendix "A"**.) In an effort to reason with the Commission, the Estate attached this email correspondence from Mr. Seep to a letter dated August 22, 2014 to Mr. Gunter, a copy of which was sent to Phil Skinner, one of the Deputy Attorneys General representing the Commission in this matter (Aff. of Marshall, ¶ 3, **Appendix "A"**.)

Ultimately, the Commission issued a Decision on October 7, 2014. In response the Estate filed its complaint in the above-captioned matter on January 6, 2015. On May 22, 2015, the parties convened telephonically and agreed to a stipulated briefing schedule for purposes of facilitating cross motions for summary judgment, as well as a stipulation of mutually agreed-upon facts. (Aff. of Marshall, ¶ 4.) The Estate agreed to these stipulations for the purpose of procedural efficiency, and there were no discussions between the parties about limiting the evidence or additional facts that either party could submit. (Aff. of Marshall, ¶ 5.) Prior to moving for summary judgment, the Estate requested and received an affidavit from Mr. Seep (the "Affidavit"), once again explaining, *inter alia*, that the Public Law Election

> did not amend any provision of any positive law title of the United states Code and did not amend the Internal Revenue Code of 1986, Title 26 of the United States Code. [The Public Law Election] enacted freestanding provisions that this Office classified as a statutory note under section 2001 of Title 26 of the United States Code. These provisions are not technically part of the Internal Revenue Code of 1986.

(Aff. of Marshall, ¶ 6, **Appendix "B"**.) The parties filed cross motions for summary judgment on June 26, 2015 and executed a Joint Stipulation of Fact and a Joint Stipulated Briefing Schedule, which were also filed on June 26, 2015.

III. DISCUSSION

A. All Testimony Contained in the Affidavit is Admissible.

1. Mr. Seep's Testimony Qualifies as Admissible Lay Witness Testimony.

The Commission falsely construes the Affidavit as containing "improper legal conclusions or conjecture which is not admissible." The Commission's argument fails for two reasons. First, a review of the Affidavit shows that the representations are factual in nature. In the Affidavit, Mr. Seep outlines his duties as the Law Revision Counsel for the U.S. House of Representatives, which include updating the United States Code to reflect amendments to its various titles, including the Internal Revenue Code of 1986 as set forth in Title 26. Mr. Seep goes on to explain that the Public Law Election did not amend the Internal Revenue Code or any other title of the United States Code, not as a legal conclusion, but as a professional observation consistent with his responsibilities as Law

Revision Counsel and factually descriptive of the Law Revision Counsel's official act of not classifying the Public Law Election as part of the Internal Revenue Code or an amendment thereto.[1] Second, to the extent Mr. Seep's statements in the Affidavit constitute opinions, they are nonetheless admissible under Rule 701 of the Idaho Rules of Evidence because they are (1) "rationally based" on Mr. Seep's perceptions as experienced in the course of his duties as Law Revision Counsel; (2) "helpful to a clear understanding" of his testimony in the Affidavit, as well as the determination of a fact at issue (i.e., the Law Revision Counsel's decision not to classify the Public Law Election as part of the Internal Revenue Code); and (3) based on his experience on the job rather than "scientific, technical or other specialized knowledge."

Mr. Seep's testimony on this issue is of critical factual importance because it reveals that the decision of the Office of the Law Revision Counsel to leave the Public Law Election out of the Internal Revenue Code of 1986, as codified in Titled 26 of the United States Code, was deliberate and grounded in the Law Revision Counsel's professional judgment. The Affidavit sheds light on the codification process of federal tax legislation putting to rest any concerns that section 301(c)'s absence from the United States Code resulted from mere oversight or arbitrary action of the Office of the Law Revision Counsel. Consistent with the Affidavit, § 285b(4) of Title 2 of the United States Code indicates that the Office of the Law Revision Counsel of the U.S. House of Representatives is responsible for "classify[ing] newly enacted provisions of law to their proper positions in the Code." By confirming the fact that the Law Revision Counsel did not classify the Public Law Election as part of the Internal Revenue Code of 1986 and that the act of doing so was well-reasoned and intentional, Mr. Seep's testimony will aid the Court in determining the ultimate legal question of whether the

[1] Idaho Code § 9-101 provides that Courts take judicial notice of "[p]ublic and private official acts of the ***legislative***, executive and judicial departments of this state ***and of the United States***." (Emphasis added). Since the Office of the Law Revision Counsel is a department of the legislative branch of the United States, this Court should take judicial notice of the fact that the Law Revision Counsel did not include the Public Law Election as part of the Internal Revenue Code of 1986.

Public Law Election is part of the Internal Revenue Code of 1986, *as it is incorporated* into Idaho law.

The Commission also wrongfully asserts that the Affidavit "usurp[s]" the Court's authority to rule on this case. (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 6-13.) On the contrary, the ultimate issue to be decided in this case relates to interpretation of *Idaho* law and whether the Idaho Income Tax Act (Idaho Code § 63-3001, et seq.) incorporates off-code provisions such as the Public Law Election in addition to Title 26 of the United States Code as they have been adopted and classified by the federal branches of government. Mr. Seep's testimony does not address Idaho law and, therefore, does not in any way interfere with this Court's authority to rule on this matter.

While the Commission is correct that Mr. Seep's testimony will affect "the main legal question" of this case, the Affidavit is nonetheless admissible. Since no jury trial has been requested, this Court must inquire, as a matter of fact and law, whether section 301(c) of Public Law 111-312 amended the Internal Revenue Code of 1986 as it is incorporated into the Idaho Income Tax Act. As Rule 704 of the Idaho Rules of Evidence makes clear, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Therefore, Mr. Seep's factual observation that section 301(c) of Public Law 111-312 did not amend the Internal Revenue Code of 1986 and the fact that the Office of Law Revision Counsel did not classify the Public Law Election as part of Title 26 of the United States Code (as well as his opinions relating to those facts) may not be excluded merely because it states inferences about an issue this Court is tasked with deciding.

2. Mr. Seep Qualifies as an Expert Witness.

Even if Mr. Seep somehow failed to qualify as an appropriate lay witness, his testimony would be nonetheless admissible as that of an expert witness. "[W]hether a witness is sufficiently qualified as an expert to state an opinion is a matter which is largely within the discretion of the trial court." *Martinez v. Dyche*, 116 Idaho 933, 934 (1989). The Commission incorrectly cites *State v. Johnson*, 119 Idaho 852, 855 (1991) to support its assertions that insufficient foundation has been offered to

establish Mr. Seep's qualifications as an expert witness. In that case, the prosecution presented expert testimony of a physician regarding child sexual abuse. *Id.* at 854. Since the physician had no expertise in the area of child sexual abuse, the Court upheld the criminal defendant's foundational objection to the physician's expert testimony. *Id.* at 855-57.

Here, by contrast, the Affidavit lays a strong foundation of Mr. Seep's expertise in the area of legislative enactments to the United States Code. Mr. Seep's Affidavit explains not only that he is the Law Revision Counsel of the U.S. House of Representatives, but also the pertinent functions of the Office of the Law Revision Counsel as set forth in Chapter 9A of title 2 of the United States Code, which include "preparing and submitting periodically such revisions in the titles of the United States Code which have been enacted into positive law as may be necessary to keep such titles current." This position and its responsibilities and authorities – and not Mr. Seep's education and background – are what uniquely qualify him to offer an expert opinion as to which public laws actually amended the Internal Revenue Code of 1986 as set forth in Title 26 or any other title of the United States Code. Accordingly, adequate foundation has been presented to establish Mr. Seep as an expert witness, in addition to a valid lay witness.

B. The Estate did not Waive its Right to Present Evidence.

1. The Stipulation of Facts was not Contemplated to Exclude Additional Factual Assertions by Any Party.

Unbelievably, the Commission punctuates its untenable arguments by insisting that the Estate's stipulation to a set of mutually agreed-upon facts as well as a streamlined summary judgment briefing schedule is tantamount to relinquishing the right to present evidence. The Joint Stipulation of Facts mentions nothing about being an exhaustive list of all facts capable of being brought before the Court. The Estate never would have agreed to such a prejudicial arrangement. (Aff. of Marshall, ¶ 7.) If the Estate had wished to preclude the presentation of additional facts or evidence by all parties, it would have demanded precise language to that effect. (Aff. of Marshall, ¶ 7.) Instead, the Joint Stipulation of Facts simply states that the parties "hereby stipulate and agree to the following" non-exclusive list of facts. The Commission does not allege, and the record does not support, that the

Affidavit in any way contradicts the mutually-agreed facts set forth in the Joint Stipulation of Facts. Thus, the Commission's construal of the Joint Stipulation of Facts as precluding additional facts or evidence cannot be taken seriously.[2]

2. The Joint Stipulated Briefing Schedule does not Preclude the Submission of Evidence.

The Joint Stipulated Briefing Schedule also makes no mention of affidavits and it certainly does not stipulate that the Estate will present no evidence in support of its Motion for Partial Summary Judgment. Rule 56(c) of the Idaho Rules of Civil Procedure allows affidavits to be filed contemporaneous with a summary judgment motion and supporting brief. Since supporting affidavits are commonly submitted alongside summary judgment motions and memoranda, interpreting the Joint Stipulated Briefing Schedule to truncate the Rule 56(c) summary judgment briefing schedule for the filing of supporting briefs, but not for the submission of supporting affidavits, would produce an absurd result requiring submission of the Affidavit one day prior to filing the motion and supporting memorandum.

Moreover, since the Commission drafted the Joint Stipulated Briefing Schedule, it should not be able to use ambiguous language to its advantage, especially since it could have easily used language

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[2] Additionally, the Commission cannot reasonably claim that the Affidavit breaches the Joint Stipulation of Facts when its own summary judgment memorandum devotes several pages (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 12-13) to arguing that Section 301(c) of Public Law 111-312 somehow amended the Internal Revenue Code as a matter of federal law. If Section 301(c) did in fact amend Title 26 as a matter of federal law as contended by the Commission, then the Commission is asserting in its Memorandum the factual contention that the Office of Law Revision Counsel either (1) classified the Public Law election to the Internal Revenue Code or (2) made a mistake by not classifying the Public Law Election to the Internal Revenue Code – both of which are precisely the opposite of Mr. Seep's observations in his Affidavit. Moreover, the Commission's summary judgment memorandum also asserts additional unstipulated (and unsubstantiated) facts by its insistence that "[t]he Estate tacitly recognizes the Internal Revenue Code 'as amended, and in effect on the first day of January 2012' incorporated the Public Law 111-312, as the Estate made an election as to the basis of the Chino property.") (*Id.* at p. 10.)

to exclude or limit the presentation of affidavits – which the Estate would have refused. As the drafter of the Joint Stipulated Briefing Schedule, any ambiguity must be resolved against the Commission. *See USA Fertilizer, Inc. v. Idaho First Nat. Bank*, 120 Idaho 271 (Ct. App. 1991).

Finally, the Commission correctly points out that the Estate had the Affidavit in its possession when the Joint Stipulated Briefing Schedule was executed. For that very reason, the Estate would never have agreed to the Joint Stipulated Briefing Schedule if it indeed waived the right to present the Affidavit as the Commission now contends. It was the Estate's good-faith belief that the Joint Stipulated Briefing Schedule was intended as a means of consolidating two parties' motions for summary judgment for the sake of procedural efficiency, and not to estop any party from introducing evidence. If the Commission truly crafted the Joint Stipulated Briefing Schedule for the hidden purpose of prohibiting evidence, without expressly stating so, then it must not benefit from such gamesmanship.

C. The Commission Should not be allowed to Undermine the Hearing Schedule that it Agreed to.

The filing of the Affidavit has not procedurally disadvantaged the Commission. The Estate notified the Commission well in advance of the content of Mr. Seep's testimony, which was summarized in a letter to the Commission's Tax Policy Specialist, Jim Gunter, dated August 22, 2014, which included an attached email from Mr. Seep and even provided contact information for the Office of the Law Revision Counsel. (Aff. of Marshall, ¶ 3, **Appendix "A"**.) As noted, a copy of the letter along with its enclosure was also mailed to the Commission's counsel of record, Phil Skinner, at that time. (Aff. of Marshall, ¶ 3.) Nonetheless, the Commission chose not to contact Mr. Seep or consider his position (or examine his qualifications and competency) as part of its Decision entered on October 7, 2014. The Commission cannot reasonably claim to be surprised or prejudiced by the Estate's reintroduction of this evidence, nor should it be permitted to invalidate its own Joint Stipulated Briefing Schedule. Finally, the Joint Stipulated Briefing Schedule provides for Answering Briefs to be filed three weeks after the parties filed their cross motions for summary judgment on June 26, 2015. Accordingly, that schedule provided the Commission with seven more days to prepare and

serve opposing affidavits to refute the Affidavit than would normally have been allowed under Rules 56(c) of the Idaho Rules of Civil Procedure. As such, the Commission has suffered no prejudice.

IV. CONCLUSION

Based on the foregoing, Plaintiff, the Estate of Zippora Stahl, Deceased, respectfully requests this Court DENY the Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep).

DATED this 13th day of July, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden	_____	US Mail
Idaho Attorney General	_____	Overnight Mail
Phil N. Skinner	_____	Hand Delivery
David B. Young	X	Facsimile No. 208-334-7844
Deputy Attorneys General	_____	Electronic Mail
State of Idaho	X	phil.skinner@tax.idaho.gov
P. O. Box 36	X	david.young@tax.idaho.gov
Boise, ID 83722-0410		
(208) 334-7530		

Deanna Silvers

Deanna Silvers

Nicholas S. Marshall, ISBN 5578
Maximilian Held, ISBN 9062
AHRENS DEANGELI LAW GROUP LLP
250 S. Fifth Street, Suite 660
P.O. Box 9500
Boise, Idaho 83707-9500
Telephone: (208) 639-7799
Facsimile: (208) 639-7788

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CVOC15-00106 AFFIDAVIT OF NICHOLAS S. MARSHALL IN RESPONSE TO DEFENDANT'S MOTION TO STRIKE

NICHOLAS S. MARSHALL, being first duly sworn upon oath, deposes and says as follows:

1. I am an attorney of record for the Estate of Zippora Stahl, deceased (the "Estate"), I am over the age of 18 and have personal knowledge of the matters stated herein.

2. Prior to commencing the above captioned litigation, I took part in a telephone conference with Jim Gunter, the Tax Policy Specialist of the Idaho State Tax Commission (the "Commission"). During this conversation, Mr. Gunter dismissed the significance of § 301(c) of Public Law 111-312's (the "Public Law Election") absence from the Internal Revenue Code of 1986 based on a purported understanding that Office of Law Revision Counsel of the U.S. House of Representatives held broad and arbitrary discretion to leave federally enacted provisions out of the United States Code.

3. Following up on Mr. Gunter's comments, my office contacted Mr. Ralph V. Seep, the Law Revision Counsel of the U.S. House of Representatives to ask about the relationship between the Public Law Election and the Internal Revenue Code. Mr. Seep responded in an email, which I enclosed with a letter to Mr. Gunter dated August 22, 2014. A copy of the letter and its enclosure was mailed to Mr. Phil Skinner, a Deputy Attorney General representing the Commission in the above-captioned matter. A true and correct copy of said letter and its enclosure is attached hereto as **Appendix "A"**.

4. On May 22, 2015, I participated in a telephone conference with Mr. Skinner, as well as his co-counsel, David Young, in which we agreed to file stipulated briefing schedules for cross-summary judgment motions, as well as a stipulated set of mutually agreed-upon facts.

5. At no time during the May 22, 2015 conference did the parties agree to, or even suggest disallowing the submission of evidence or the allegation of contested facts. The discussion

centered around coordination of briefing and agreement of selected facts for the purpose of expediting summary judgment.

6. Attached hereto as **Appendix "B"** is the Affidavit of Ralph V. Seep that is the subject of the Commission's Motion to Strike, which my office requested prior to moving for partial summary judgment in the above-captioned matter.

7. I did not expect that the Commission would stipulate to certain facts asserted in Mr. Seep's Affidavit, most notably his observations that the Public Law Election did not amend the Internal Revenue Code of 1986 and is not part of the Internal Revenue Code of 1986, since these facts are wholly inconsistent with certain of the Commission's arguments in the above-captioned matter. Therefore, I did not even consider requesting the Commission stipulate to these facts set forth in the Ralph V. Seep affidavit in the Joint Stipulation of Facts filed on June 26, 2015. Conversely, at no point did I, or any other representative of the Estate, agree not to introduce these facts or any other facts or evidence. I did not agree to relinquish the Estate's rights to present facts and evidence in this matter.

Further the affiant sayeth not.

DATED this 13th day of July, 2015.

Nicholas S. Marshall, ISBN 5578

STATE OF IDAHO)
) ss.
County of Ada)

On this 13th day of July, 2015 before me, a Notary Public, Nicholas S. Marshal personally appeared, 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 last above written.

(SEAL) DEANNA L. SILVERS NOTARY PUBLIC STATE OF IDAHO

Deanna L. Silvers
Notary Public, State of Idaho
My Commission Expires 5-5-2021

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden	_____	US Mail
Idaho Attorney General	_____	Overnight Mail
Phil N. Skinner	_____	Hand Delivery
David B. Young	X	Facsimile No. 208-334-7844
Deputy Attorneys General	_____	Electronic Mail
State of Idaho	X	phil.skinner@tax.idaho.gov
P. O. Box 36	X	david.young@tax.idaho.gov
Boise, ID 83722-0410		
(208) 334-7530		

Deanna Silvers

Deanna Silvers

AHRENS DEANGELI

LAW GROUP

August 22, 2014

Via U.S. Mail and Email to: jim.gunter@tax.idaho.gov

Jim Gunter
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410

RE: Docket No. 26003
Estate of Zippora Stahl, Deceased (the "Estate")

Jim:

In a telephone conference you and I recently discussed whether or not Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010[1] (hereafter, "Section 301(c)") is part of the Internal Revenue Code of 1986 rather than a "freestanding" or "off code" provision of that Act. During that conversation, I understood you to make the argument that Section 301(c) is part of the Internal Revenue Code of 1986 because it amended the Internal Revenue Code.

As I indicated in our recent conversation and in prior correspondence regarding this matter, the Office of the Law Revision Counsel[2] (herein the "LRC Office") is charged with periodically compiling the amendments made to sections of the Internal Revenue Code of 1986 by Public Laws that are passed by Congress and signed by the

[1] The legal citation for Section 301(c) is: Pub. L. 111-312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300. As you know, Section 301(c) is the carryover basis provision at issue in the Estate's refund claim.
[2] The Office of the Law Revision Counsel is established within the U.S. House of Representatives pursuant to 2 U.S.C.A. § 285 (2014).

APPENDIX "A"
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President.[3] The LRC Office publishes that compilation as Title 26 of the United States Code titled the "Internal Revenue Code."[4]

To be clear, the Internal Revenue Code of 1986 can only be amended by a provision that specifically amends the Internal Revenue Code of 1986 in a Public Law that is passed by Congress and signed by the President. The LRC Office simply compiles and publishes specific amendments to the Internal Revenue Code of 1986 *explicitly made by Congress* in the Public Laws of the United States. Unlike Congress, the LRC Office does not have any discretion to amend the Internal Revenue Code of 1986.

Given the LRC Office's role in compiling the Internal Revenue Code, we contacted LRC Office assistant counsel, Ray Kaselonis, to discuss Section 301(c)'s relationship to the Internal Revenue Code of 1986. During a conversation with my colleague Tyler Rice, Mr. Kaselonis indicated that Section 301(c) was not part of the Internal Revenue Code of 1986 and that the Law Revision Counsel[5] would provide its written opinion regarding Section 301(c) if we submitted our questions to the LRC Office via e-mail.

Mr. Rice submitted our questions to the LRC Office via an e-mail on August 13, 2014. In a reply e-mail dated August 20, 2014, Law Revision Counsel, Ralph V. Seep, confirmed that only Congress can amend the Internal Revenue Code of 1986 and that Section 301(c) "is not an amendment to, or part of, the Internal Revenue Code of 1986." Furthermore, Mr. Seep's e-mail states that Section 301(c) is a "freestanding provision in Pub. L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010." A copy of Mr. Rice's August 13, 2014 e-mail and Mr. Seep's August 20, 2014, reply e-mail is enclosed for your review.

If you have any questions regarding the Law Revision Counsel's analysis of Section 301(c), I encourage you to call Mr. Kaselonis. Mr. Kaselonis' direct dial is 202.226.2419.

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[3] See 2 U.S.C.A. § 285b.

[4] Although the contents of Title 26 do not determine whether a provision forms part of the Internal Revenue Code of 1986, the LRC Office correctly states that "*the sections* of Title 26 of the United States Code are identical to those of the Internal Revenue Code of 1986." Email of Ralph Seep dated August 20. 2014 (emphasis added).

[5] The Law Revision Counsel, currently Ralph V. Seep, is appointed by the Speaker of the United States House of Representatives and is charged with the management, supervision and administration of the LRC Office. See 2 U.S.C.A. § 285b.

Please call if you have any questions regarding the foregoing. Also, if you think it would be helpful to the resolution of this matter, I will make myself available for further meetings. I can be reached at 208.639.7799.

Very truly yours,

AHRENS DEANGELI LAW GROUP LLP

Nicholas S. Marshall, P.C., for the Firm

By: _____
Nicholas S. Marshall, President

NSM:dls

Enclosures

cc: Chelsea Kidney, Deputy Attorney General
Phil Skinner, Deputy Attorney General
Kathleen Krucker, Personal Representative

Tyler Rice

From: uscwebmail <uscwebmail@mail.house.gov>
Sent: Wednesday, August 20, 2014 11:39 AM
To: Tyler Rice
Subject: RE: P.L. 111-312 Section 301(c)

Mr. Rice:

The Internal Revenue Code of 1986 is positive law. Any law enacted by Congress is positive law. When referring to titles of the United States Code, positive law has a narrower meaning. It means one law enacted by Congress as a title of the United States Code. This is explained on our website at: http://uscode.house.gov/codification/legislation.shtml. The Internal Revenue Code of 1986 is restated as Title 26 of the United States Code but is not a positive law title of the United States Code. However, the sections of Title 26 of the United States Code are identical to those of the Internal Revenue Code of 1986. You are correct that only Congress can amend the Internal Revenue Code.

Congress enacted the Internal Revenue Code of 1954 as a Code by the act of Aug. 16, 1954, ch. 736, 68A Stat. 3. Congress later revised and redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986 by Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2095.

Pub. L. 111-312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300, is not an amendment to, or part of, the Internal Revenue Code of 1986. It is a freestanding provision in Pub. L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. Our Office determines whether to include in the United States Code provisions that do not amend an existing law. We decided to place §301(c) in the United States Code as a statutory note under 26 USC 2001. Whether a provision is classified to the United States Code and, if classified, whether it is set out as a section or a statutory note does not affect the provision's meaning or validity.

Ralph V. Seep
Law Revision Counsel
U.S. House of Representatives

From: Tyler Rice [TRice@adlawgroup.com]
Sent: Wednesday, August 13, 2014 6:56 PM
To: uscode
Cc: Nicholas Marshall; David Wilson
Subject: P.L. 111-312 Section 301(c)

Good Afternoon,

As I recently discussed with Ray Kaselonis, I am writing to the Office of the Law Revision Counsel in hopes of having some questions answered. My understanding is that the Internal Revenue Code of 1986, as amended ("IRC"), is "positive" law, meaning only Congress, by way of a direct amendment, can amend any section, chapter or other provision of the IRC. The term "Internal Revenue Code of 1986 of the United States" first appears in Public Law 99-514, dated October 22, 1986, which states that "[t]he Internal Revenue Title enacted August 16, 1954, as heretofore, hereby or hereafter amended, may be cited as the 'Internal Revenue Code of 1986.'" The Internal Revenue Title enacted August 16, 1954 was contained in Public Law 591 – Chapter 736, which set forth an "Internal Revenue Title" containing subtitles A through G and §§ 1 through 8023. Thus, the term "Internal Revenue Code of 1986, as amended" refers only to the Title enacted August 16, 1954, as amended by each Public Law passed by Congress since that time.

Questions:

- Is the above analysis correct?
- Does Public Law 111-312, title III, § 301(c), Dec. 17, 2010, 124 Stat. 3300 amend any section, chapter or other provision of the IRC?

- Is Public Law 111-312, title III, § 301(c), Dec. 17, 2010, 124 Stat. 3300, part of the IRC?

Thank you for your assistance. If you have any questions, please do not hesitate to call or email.
Tyler Rice

Tyler Rice
Ahrens DeAngeli Law Group
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p: 208.639.7799 • f: 208.639.7788
250 S. 5th St., Ste. 660, P.O. Box 9500, Boise ID 83707

PLEASE CONFORM AND RETURN

Nicholas S. Marshall, ISBN 5578
Maximilian Held, ISBN 9062
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Boise, Idaho 83707-9500
Telephone: (208) 639-7799
Facsimile: (208) 639-7788

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. OC15-00106 AFFIDAVIT OF RALPH V. SEEP

CITY OF WASHINGTON)
:ss
DISTRICT OF COLUMBIA)

Affiant, Ralph V. Seep, being sworn, states that:

1. I am the Law Revision Counsel of the U.S. House of Representatives.

2. As part of its functions, as set forth in Chapter 9A of Title 2 of the United

APPENDIX "B"

States Code, the Office of the Law Revision Counsel of the U.S. House of Representatives is responsible for preparing and submitting periodically such revisions in the titles of the United States Code which have been enacted into positive law as may be necessary to keep such titles current.

3. Section 301(c), of title III of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312, 124 Stat. 3296 ("Section 301(c)"), did not amend any provision of any positive law title of the United States Code and did not amend the Internal Revenue Code of 1986, Title 26 of the United States Code. ``Section 301(c)'' enacted freestanding provisions that this Office classified as a statutory note under section 2001 of Title 26 of the United States Code. These provisions are not technically part of the Internal Revenue Code of 1986.

DATED: 4/23/2015

Ralph V. Seep
Office of the Law Revision Counsel
U.S. House of Representatives
H2-308 Ford House Office Building
Washington, DC 20515

SUBSCRIBED AND SWORN to before me this 23rd day of April, 2015.

Signature of Notarial Officer
Title (and Rank) Public Notary
My Commission Expires: 04/14/2017

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CV-OC-2015-00106 CASE NO. CV-OC-00106 ANSWERING BRIEF OF PLAINTIFF IN RESPONSE TO TAX COMMISSION'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, hereby submits this Answering Brief in Response to the Motion for Summary Judgment filed by the Idaho State Tax Commission (the "Commission") in the above captioned matter. The Commission makes three arguments in its Motion for Summary Judgment: (1) that the intent statute of Idaho Code § 63-3002 requires Idaho taxpayers to report identical amounts of taxable income to the State of Idaho

and the IRS; (2) that the definition of "Internal Revenue Code" set forth in Idaho Code § 63-3004 encompasses not only Title 26 of the United States Code but also other provisions of federal law relating to income taxes that alter the "effect and reach" of the Internal Revenue Code; and (3) that § 301(c) of Public Law 111-312 (the "Public Law Election") amended the Internal Revenue Code for purposes of federal law. Each of these arguments are addressed below in the order they appear in the Commission's Motion for Summary Judgment.

As discussed below, the Commission's arguments are not supported by the clear text of the Statutes of Idaho Code § 63-3001 et seq. (the "Idaho Act") and are directly controverted by applicable canons of statutory construction. Furthermore, even if the Commission's arguments could be construed to introduce a hint of ambiguity into the text of any of the statutes discussed herein, which they cannot, it is clear that any such ambiguity must be "construed as favorably as possible to the taxpayer and strictly against the taxing authority." *J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968)). Accordingly, the Commission's Motion for Summary Judgment must be denied.

II. RELEVANT FACTS.

Zippora Stahl died in 2010, owning an interest in certain real property (the "Chino property") with an estimated fair market value of $16,000,000. *See* (Joint Stipulation of Facts, filed in the above captioned matter on June 26, 2015 ("Joint Stipulation of Facts"), ¶¶ 1-3.) The Estate sold the Chino property in 2012 for $16,318,909. (Joint Stipulation of Facts, ¶ 4.) On the Estate's Federal Form 8939, the Estate elected pursuant to § 301(c) of Public Law 111-312 (the "Public Law Election") to opt out of paying Federal Estate Tax in exchange for taking (for Federal Income Tax Purposes) a carryover basis in the Chino property of only $1,457,341, rather than the $16,000,000 stepped-up federal basis normally allowed under § 1014 of the Internal Revenue Code of 1986. (Joint Stipulation of Facts, ¶ 5.) Since Idaho does not impose an effective estate tax on decedents dying in 2010, the Estate made no corresponding election for Idaho State Income Tax purposes on any state tax form. For that reason, the Estate filed an Amended Form 66 reporting $309,469.00 of Idaho adjusted taxable income based on a stepped-up Idaho income tax basis of

$16,000,000. (Joint Stipulation of Fact, ¶ 8.) The Estate requested a refund of $1,026,435 of Idaho income taxes that the Estate had mistakenly paid on the sale of the Chino Ranch, which the Commission denied. (Joint Stipulation of Facts, ¶¶ 8-9.) In response, the Estate properly and timely filed its complaint in the above-captioned matter on January 6, 2015. The parties filed cross motions for summary judgment on June 26, 2015.

III. SUMMARY JUDGMENT STANDARD.

Summary judgment should be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho R. Civ. P. 56(c); *Rawson v. United Steelworkers of America*, 111 Idaho 630, 633 (1986). While the Court is required to "liberally construe" all facts and inferences in the record in favor of the party opposing the motion, summary judgment must be granted when no material facts are in dispute. *Rawson*, 111 Idaho at 633.

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404 (Ct. App. 1992). Summary judgment must be granted once that burden is met, unless the record contains conflicting inferences or reasonable minds might reach different conclusions. *Farmer's Ins. Co. of Idaho v. Brown*, 97 Idaho 380, 381 (1976). A motion for summary judgment should only be denied if reasonable people might reach different conclusions based on the same set of operative facts. *Doe v. Durtschi*, 110 Idaho 466, 470 (1986).

Here, all relevant law, as analyzed below, unquestionably provides that the Estate received a step-up in its income tax basis in the Chino Ranch pursuant to the Idaho Act and § 1014 of the Internal Revenue Code. Accordingly, the Commission cannot carry its burden of establishing that it is entitled to judgment as a matter of law and its motion for summary judgment must be denied.

IV. SECTION 63-3002 OF THE IDAHO CODE DOES NOT REQUIRE IDAHO TAXPAYERS TO REPORT IDENTICAL AMOUNTS OF TAXABLE INCOME TO THE STATE OF IDAHO AND THE IRS.

The Commission takes the position that the Idaho Act's "intent statute" at § 63-3002 requires taxpayers to report to the State of Idaho the identical sum of taxable income reported to the IRS. As discussed below, the Commission's formulation of the intent statute is meritless because it (A) is inconsistent with the express terms of § 63-3002, (B) contradicts the express language and clearly crafted structure of the Idaho Act, (C) violates the canon of statutory construction that the more specific section controls the more general section, (D) violates the canon of statutory construction providing that statutes which are *in pari materia* must be interpreted harmoniously, and (E) violates the canon of statutory construction that the asserted purpose for enacting legislation cannot modify the plain meaning of the statutes comprising the legislation.

A. The Commission's Formulation of § 63-3002 Is Inconsistent with the Statute's Express Terms.

After the Commission sets forth the full statutory text of Idaho Code § 63-3002's Declaration of Intent, it goes on to grossly mischaracterize the words of that section. At page 8 of the Memorandum in Support of Tax Commission's Motion for Summary Judgment, the Commission contends that § 63-3002 stands for the blanket proposition that "[a] taxpayer 'shall' report to Idaho the 'identical sum' of income that is reported to the Internal Revenue Service." This is a gross mischaracterization of the statute's clear meaning. The actual text of § 63-3002 is as follows:

> DECLARATION OF INTENT. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an

> amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Contrary to the Commission's mischaracterization of the intent statute, nothing in its actual text directs Idaho taxpayers to report identical sums of taxable income to the IRS and the State of Idaho. The critical portion of the text of the intent statute specifies that "it is the intent of the legislature to make the provisions of the Idaho Act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income ***to the end that*** taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, ***subject only to modifications contained in Idaho law***" and that it is the Legislature's purpose "to achieve this result by the application of the various provisions ***of the Federal Internal Revenue Code***." I.C. § 63-3002 (emphasis added). This statement of legislative purpose makes two features of the Idaho Legislature's intent clear: (1) the specific tool for achieving consistency between federal and state tax reporting is making the provisions of the Idaho Act identical to the provisions of the Internal Revenue Code and (2) the same amounts of taxable income should, subject to modifications contained in Idaho law, be reported to the IRS and the State of Idaho by applying the Internal Revenue Code. Therefore, contrary to the Commission's reading, the intent statute of § 63-3002 does not mandate that taxpayers report identical amounts of taxable income to the IRS and Idaho.

B. The Tax Commission's Strained Interpretation of § 63-3002 Contradicts the Express Language and Clearly Crafted Structure of the Idaho Act and Violates the Presumption That the Legislature Does Not Enact Superfluous Statutes.

As noted, the Commission contends that § 63-3002 "requires" taxpayers to report the identical amount of taxable income to the Commission as they report to the IRS. (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 6, 8.) In other words, the Commission argues

that § 63-3002 defines taxable income under the Idaho Act to be the "identical sum of taxable income that is reported to the Internal Revenue Service." (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 6, 8.) The Commission's formulation is wholly inconsistent with the clearly crafted structure of the Idaho Act.

The Idaho Act provides a clearly crafted structure for determining both "taxable income" and "Idaho taxable income." Specifically, Idaho Code § 63-3011C defines "Idaho taxable income" as "taxable income as modified pursuant to the adjustments specifically provided in [the Idaho Act]." Idaho Code § 63-3011B defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." Finally, Idaho Code § 63-3004 defines "Internal Revenue Code" to be the "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012."

If the Commission's formulation of the intent statute – i.e., a supposed mandate requiring taxpayers to report identical amounts of "taxable income" to the Commission and the IRS – is accurate, then there would be no need for the Idaho Act to define (1) "taxable income" under § 63-3011B or (2) "Internal Revenue Code" under § 63-3004. Taxpayers would simply parrot on their Idaho returns the amount of taxable income reported to the IRS and then make adjustments to that amount to determine "Idaho taxable income." This is a much different process than the Idaho Act's express statutory scheme of first determining federal taxable income under the Internal Revenue Code of 1986 pursuant to §§ 63-3011B and 63-3004, and then applying other applicable adjustments under Idaho law, before arriving at "Idaho taxable income" as defined in § 63-3011C. Under the Commission's formulation, §§ 63-3011B and 63-3004 are effectively erased from the Idaho Act. Therefore, the Commission's interpretation of § 63-3002 presupposes that both §§ 63-3011B and 63-3004 were enacted frivolously, thus violating the rule of statutory construction presuming that the Legislature does not enact statutes for no reason. *See Potlatch Corp. v. United States*, 134 Idaho 912, 915 (2000) ("A fundamental principle of statutory construction is that a provision should not be construed to make surplusage of provisions included within the act.") (citing *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425 (1993)); *see also Sweitzer v. Dean*, 118 Idaho 568,

572 (1990) ("It is incumbent on this Court to interpret a statute in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute."); *Potlatch Corp.* 134 Idaho at 915 ("Standard rules of statutory interpretation require this Court to give effect to the legislature's intent and purpose, and to every word and phrase employed.").

Far from being frivolous or meaningless statutes, § 63-3011B and the associated definition of Internal Revenue Code found in § 63-3004 serve important functions. First, they instruct Idaho taxpayers how to calculate their "taxable incomes" – pursuant to the Internal Revenue Code of 1986. Second, they perform a meaningful "filtering" function by eliminating from the Idaho Act the off-code provisions of federal tax law that are not germane to the calculation of Idaho taxable income. As noted at pages 11-12 of the Plaintiff's Memorandum in Support of Partial Summary Judgment, "some income tax provisions enacted by Congress are not part of the [Internal Revenue] Code," since federal taxable income "determined under the Internal Revenue Code" can be entirely different than the amount reported to the IRS. *See* Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649, 658 (2006).

Sound policy reasons exist for filtering off-code provisions of federal law from the Idaho Act. Many of these uncodified laws involve discreet tax breaks to various special interests. *See, e.g.*, Section 1608 of Pub. L. No. 99-514 (specifically granting charitable deductions to taxpayers who receive "the right to seating or the right to purchase seating" at sports events in exchange for donations to Louisiana State University or the University of Texas); Section 977 of Pub. L. No. 105-34 (granting a special extended net operating loss carry back period to Amtrak); Section 1423 of Pub. L. No. 99-514 (providing a charitable estate tax deduction to a specific American businessman). Blindly incorporating these off-code provisions would prejudice the State of Idaho which doesn't share the same motives as the United States Congress for enacting such tax breaks. Conversely, the Public Law Election, an ad hoc federal compromise surrounding the reinstatement of the Federal Estate Tax, is irrelevant to Idaho which does not impose a state-level estate tax. Denying a step-up in basis for Idaho Income Tax purposes would produce an unintended a windfall to the State of Idaho, which would not collect income tax on the pre-death appreciation of the

Estate's interest in the Chino Ranch had Mrs. Stahl died in any other year – despite the absence of an Idaho estate tax. To make matters worse, blindly incorporating federal off-code will burden the Idaho Legislature with "hav[ing] to research each tax act to find a particular non-code provision or be informed in some way as to which tax act contains the non-code provision in question." Hanna, *supra*, at 661. Since the Idaho Legislature amends § 63-3004 every year to re-incorporate the Internal Revenue Code of 1986, an intent to painstakingly weed out undesirable or transitory uncodified federal tax provisions on an annual basis cannot be assumed. Therefore, the Commission's interpretation of § 63-3002 not only renders meaningless both the definition of "taxable income" set forth in § 63-3011B and the "Internal Revenue Code" set forth in § 63-3004, it also nullifies that statute's important filtering function.

C. The Commission's Application of § 63-3002 Contradicts the Presumption That the Specific Statute Controls over the General Statute.

As previously analyzed, the Idaho Legislature clearly and unambiguously utilized § 63-3011B to define taxable income as "federal taxable income as determined under the Internal Revenue Code." Furthermore, Idaho Code § 63-3004 provides a specific and detailed definition of the "Internal Revenue Code." Therefore, § 63-3011B provides specific and detailed instructions for calculating "taxable income" under the Idaho Act (i.e., in accordance with the detailed and manifold provisions of Title 26 of the United States Code). Those instructions, including the provisions of Title 26 which are thereby incorporated, are far more specific than the "income that is reported to the internal revenue service" language of the § 63-3002 intent statute. In *Mulder v. Liberty Northwest Ins. Co.*, 135 Idaho 52, 57 (2000), the Idaho Supreme Court explained, "A basic tenet of statutory construction is that ***the more specific statute or section addressing the issue controls over the statute that is more general***. . . . Thus, the more general statute should note be interpreted as encompassing an area already covered by one which is more specific". (Emphasis added) (internal citations omitted). Thus, the more specific provisions of §§ 63-3011B and 63-3004 trump § 63-3002 as that statute is construed by the Commission.

D. The Commission's Analysis of § 63-3002 Conflicts with the Rule That Statutes *In Pari Materia* Must Be Construed Harmoniously and Any Asserted Purpose of the Legislature Does Not Trump the Plain Meaning of Statutory Language.

Even if, assuming arguendo, the Commission's construal of the intent statute is correct, it would result in a direct conflict between (1) § 63-3002 and (2) §§ 63-3011B and 63-3004. Under the Commission's reading, § 63-3002 requires taxpayers to determine their incomes under the Idaho Act based solely on the taxable income they report to the IRS. On the other hand, §§ 63-3011B and 63-3004 require taxpayers to calculate taxable income pursuant to the Internal Revenue Code. In situations such as the case at hand, where a taxpayer's federal taxable income is partially calculated in accordance with off-code provisions, the Commission's interpretation would construe § 63-3002 and § 63-3011B to provide conflicting definitions of "taxable income." Consequently, the Commission's formulation cannot stand because statutes *in pari materia* must be construed harmoniously and the asserted purpose of the Legislature cannot trump a statute's plain meaning.

In *Grand Canyon Dories v. Idaho State Tax Commission*, 124 Idaho 1, 4 (1993), the Idaho Supreme Court explained:

> The rule that statutes *in pari materia* are to be construed together means that each legislative act is to be interpreted with other acts relating to the same matter or subject. Statutes are *in pari materia* when they relate to the same subject. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and so far as still in force brought into harmony by interpretation.

The harmonious interpretation of §§ 63-3002, 63-3011B, and 63-3004 is evident from the plain text and structure of the Idaho Act. The requirement of § 63-3011B that taxable income be determined pursuant to the Internal Revenue Code is a deliberate "modification" of the Legislature's general policy goal that taxpayers report the same amount of taxable income to the State of Idaho and the IRS. Such "modifications contained in Idaho law" are expressly referenced in § 63-3002. The

Idaho Supreme Court illustrated this concept when it rejected the Idaho State Tax Commission's attempt to apply the formula of § 460 of the Internal Revenue Code to the taxpayer's income reporting method. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 796-97 (2006). The Court noted that § 63-3027 sets forth a different formula as a valid modification of the federal tax report requirements for Idaho Income Tax purposes. *Id.* Other cases also support reporting Idaho Taxable Income in accordance with the Internal Revenue Code rather than blindly parroting the amounts reported to the IRS. *See Houston v. Idaho State Tax Comm'n*, 126 Idaho 718, 720 (1995) ("[F]or purposes of calculating income and deductions, Idaho incorporates the Federal Internal Revenue Code by reference."); *see also Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 388 (1996) ("The legislature has defined taxable income for state tax purposes [to mean] 'taxable income' as *defined* in section 63 of the Internal Revenue Code . . . .") (emphasis in original).

The text of § 63-3002, itself, *encourages* the modification of the general "identical sum" reporting concept by instructing the Legislature "to achieve this result ***by the application of the various provisions of the Federal Internal Revenue Code***." (Emphasis added). Accordingly, the Legislature modified the general concept of § 63-3002 by its enactment of §§ 63-3011B and 63-3004, which only incorporate the Internal Revenue Code, but not the off-code provisions of the United States that are not part of the Internal Revenue Code. This interpretation harmonizes and gives effect to the plain meaning of §§ 63-3002, 63-3011B, and 63-3004.

E. The Commission's Formulation of § 63-3002 Disregards the Principle That a Statute's Asserted Purpose Cannot Modify the Statute's Plain Meaning.

Even if a direct conflict were to exist between § 63-3002 and § 63-3011B, as the Commission argues, the conflict would have to be resolved in favor of the Estate. First, as a Declaration of Intent, § 63-3002 cannot modify the clear and unambiguous language of § 63-3011B. *See Viking Constr., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 191 (2010) ("The asserted purpose for enacting legislation ***cannot modify its plain meaning***.") (emphasis added) (*abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011)). Second, "It is incumbent upon [a] Court to interpret a statute in a manner that will not nullify it,

and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute," as would be the case if § 63-3011B's definition was trumped by § 63-3002. *Sweitzer v. Dean*, 118 Idaho 568, 572 (1990). Lastly, it is a fundamental maxim of Idaho law to interpret tax statutes "as favorably as possible to the taxpayer and strictly against the taxing authority." *J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968)); *cf. In re Potlatch Forests*, 72 Idaho 291, 298 (1952) (Holding that "an act providing, among other things, for revenue or a tax . . . must be construed strictly in favor of the taxpayer."). Accordingly, the Idaho Act does not incorporate the Public Law Election for determining taxable income notwithstanding Idaho Code § 63-3002.

V. THE IDAHO ACT'S DEFINITION OF "INTERNAL REVENUE CODE" DOES NOT INCLUDE UNCODIFIED PROVISIONS OF FEDERAL LAW THAT ARE NOT PART OF TITLE 26 OF THE UNITED STATES CODE.

Once again, Idaho Code § 63-3011B defines "taxable income" for Idaho Income Tax purposes as "federal taxable income ***as determined under the Internal Revenue Code***." (Emphasis added). Idaho Code § 63-3004(a) goes on to define the "Internal Revenue Code" as "the Internal Revenue Code of 1986 of the United States, ***as amended***, and in effect on the first day of January 2012." (Emphasis added). Backed with no pertinent authority, the Commission insists that under Idaho law, the Legislature's use of the word "amended" somehow indicates the intent to incorporate into the Idaho Act not only the text of Title 26 of the United States Code as it was enacted and amended by Congress as of January 1, 2012, but also other provisions of Public Laws that do not amend the text of Title 26, but rather merely alter its "effect and reach." (Memorandum in Support of Tax Commission's Motion for Summary Judgment, p. 12.) The Commission's argument finds no support in the plain language of § 63-3004(a). Likewise, the Commission's interpretation of § 63-3004(a) ignores established concepts under Idaho law regarding the types of legislative actions that constitute statutory amendments. Finally, the Commission's interpretation of § 63-3004(a) ignores the presumption that the absence of an expressed intent to incorporate off-code provisions indicates an intent to not incorporate such provisions.

A. The Commission's Interpretation of § 63-3004(a) Ignores the Statute's Plain, Usual, and Ordinary Meaning.

Words in a statute are "given their plain, usual, and ordinary meanings." *State v. Dunlap*, 155 Idaho 345, 361 (2013). As indicated in pages 6-7 of the Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment, the plain, usual, and ordinary meaning of the Idaho Legislature's reference to the "Internal Revenue Code of 1986, as amended and in effect on the first day of January, 2012" is a reference to the federal statutes set forth at 26 U.S.C. § 1, *et seq.* as they existed on January 1, 2012. However, the Commission focuses on the word "amendment" as used in § 63-3004(a), arguing that it somehow pulls into the Idaho Act all provisions of federal law that alter the "effect and reach" of Title 26.

The Commission's reading of that statute is inconsistent with the plain, usual, and ordinary meaning of the word "amended." In § 63-3004(a), the word "amended" modifies the term "Internal Revenue Code." Therefore, the word "amended" refers to changes and revisions made to the text of the statutes comprising Title 26 of the United States Code rather than off-code provisions that are not part of Title 26. Black's Law Dictionary defines the term "amend" as follows:

> To change the wording of; specif., to formally alter (a statute, constitution, motion, etc.) by striking out, inserting, or subtracting words.

Black's Law Dictionary (10th ed. 2014). Black's Law Dictionary also defines the term "amend something previously adopted" as "to change an otherwise final text." *Id.* Likewise, Black's Law Dictionary defines the term "amendment" as:

> a formal and usu. Minor revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction; ***esp., an alteration in wording***.

Id. (Emphasis added).[1] Given the plain, ordinary, and usual meaning of the terms "amend" and

[1] Petitioner notes that the Commission's Memorandum in Support of Summary Judgment (p. 11) references only the words "revision or addition" in its citation to the Black's Law Dictionary definition of the word "amendment" thereby presenting a misleading characterization of this

"amendment," it is clear the exclusive purpose of the word "amended" in § 63-3004(a) is to incorporate into the Idaho Act only the text of Title 26 of the United States Code as that text had been amended by Congress as of January 1, 2012.[2]

The Tax Reform Act of 1986, which was passed by Congress on October 22, 1986, first codified the Internal Revenue Coe of 1986 as part of Title 26 when it stated that "[t]he Internal Revenue Title enacted August 16, 1954, as heretofore, hereby or hereafter amended, may be cited as the 'Internal Revenue Code of 1986.'" It is almost too obvious to point out that the Idaho Legislature in February of 2012 could not have intended to incorporate the Internal Revenue Code of 1986 as it existed on October 22 of 1986. Accordingly, the Legislature incorporated the "Internal Revenue Code of 1986, as amended, and in effect on January 1, 2012." (Emphasis added). Therefore, consistent with the plain, usual, and ordinary meaning of the word "amended" as used in § 63-3004(a), the clear intent of the Idaho Legislature is to include within the definition of "Internal Revenue Code" not only the statutes that comprised the Internal Revenue Code on October 22, 1986, but also the innumerable amendments that have been made to the Internal Revenue Code as codified in Title 26 of the U.S. Code between October 22, 1986 and January 1, 2012.

B. The Commission's Interpretation of § 63-3004(a) Ignores the Established Idaho Law Conceptions of the Types of Legislative Action That Constitute Statutory Amendments.

In addition to the plain text of § 63-3004(a), the Commission ignores Idaho case law indicating that the concept of statutory amendment does not include legislative enactments that merely alter the "effect and reach" of a statute. In *Sunshine Mining Company v. Allendale Mut. Ins. Co.*, 107 Idaho 25, 26-27 (1984), the defendant argued that Idaho Code § 41-2401, requiring the use of a standard fire insurance policy form that included a provision requiring causes of action for claims under a policy to be commenced within 12 months after a loss, "amended" the five-year statute of limitations

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source of authority.

[2] As discussed in section VI, *infra*, the Public Law Election did not amend or become part of the Internal Revenue Code of 1986.

of Idaho Code § 5-216 that would otherwise have applied to claims under the policy. In declining to impose the 12-month limitations period, the Idaho Supreme Court stated that "we believe if the legislature intended to so amend and modify the provisions of I.C. § 5-216, it would have squarely addressed the issue by enacting a specific statute." *Id.* at 27. Thus, under Idaho law, a statute purporting to alter the reach and effect of § 5-216 was deemed not to amend § 5-216 because the Legislature did not specifically change the text of § 5-216. Given this understanding of the concept of statutory amendment, the word "amendment" as used in § 63-3004(a) should not be interpreted to incorporated into the Idaho Act off-code provisions of federal tax law that are not part of the Internal Revenue Code.

C. The Absence of the Idaho Legislature's Expressed Intent to Incorporate Off-Code Provisions Indicates Intent to *Not* Incorporate Such Provisions.

The Commission's construction of § 63-3004(a) ignores the fact that if the Idaho Legislature had intended to incorporate into the Idaho Act provisions of federal tax law that are not set forth in the Internal Revenue Code, it would have clearly stated such intent rather than simply utilizing the term "amendment" and hoping that the Commission's implausibly expansive and imprecise definition of the term would be utilized to interpret the statute. Other jurisdictions, such as Colorado, desiring such broad definitions of the "Internal Revenue Code" not only incorporate the provisions of the "'Internal Revenue Code of 1986' as amended," but also expressly incorporate "***other provisions of the laws of the United States*** relating to federal income taxes." Colo. Rev. Stat. §§ 39-22-103; 39-22-104 (emphasis added). Likewise, the Idaho Legislature could have followed Minnesota's lead and incorporated not just the "Internal Revenue Code, as amended" but also incorporated "***any uncodified provision in federal law*** that relates to provisions of the Internal Revenue Code." Minn. Stat. § 290.01 Subd. 31 (emphasis added). Another option would entail borrowing Utah's income tax regime which incorporates not only the Internal Revenue Code as amended but also "***other provisions of the laws of the United States*** relating to federal income taxes that are in effect for the taxable year" or borrowing California's definition of "Internal Revenue Code of 1986" as "Title 26 of the United States Code, including all amendments thereto" with added reference to "***uncodified provisions***

that relate to provisions of the Internal Revenue Code that are incorporated for purposes of [the Personal Income Tax Law]." Utah Code Ann. § 59-10-103(2)(b); Cal. Rev. & Tax. Code § 17024.5 (emphasis added). Instead, the Idaho Legislature simply incorporated into the Idaho Act the "Internal Revenue Code of the United States, as amended, and in effect on the first day of January, 2012."

The absence of the Idaho Legislature's expressed intent to incorporate into the Idaho Act provisions of federal tax law that are not part of Title 26, such as § 301(c) of Public Law 111-312, indicates its intention to not incorporate such provisions. This canon of statutory construction, known as *expressio unius est exclusio alterius*, was applied by the Idaho Supreme Court when it ruled that a private restrictive land use covenant prohibiting more than two families from residing in a single home did not violate Idaho Code §§ 67-6530 and 67-6531 which require "zoning laws" to define the term "single family dwelling" to include any home in which eight or fewer unrelated elderly persons reside. *D & M Country Estates Homeowners Ass'n v. Romriell*, 138 Idaho 160, 165 (2002). The Court reasoned, "where a statute specifies certain things, ***designation of the specific excludes other things not mentioned*** . . . . Thus, the reference to 'zoning' specifically excludes the statute's application to private restrictive covenants, which were not mentioned." *Id.* (emphasis added); *see also Drainage Dist. No. 2 of Ada County v. Ada County*, 38 Idaho 778 (1924) ("The fact that these other sections [of the Idaho Codified Statutes] exempt certain parties from liability for fees, and do not include drainage districts in the exempted classes, is valid ground for holding that such districts are not exempted."). Furthermore, the Court in *Romriell* also indicated that "courts must construe a statute under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed." 138 Idaho at 165.

The principles of statutory construction set forth in *Romriell* and *Drainage Dist. No. 2 of Ada County* are concisely summarized in 2B SUTHERLAND STATUTORY CONSTRUCTION § 51:7 (7th ed.), which explains "where a statute refers specifically to another statute by title or section number, ***there is no reason to think its drafters meant to incorporate more than the provision***

specifically referred to." (quoting *Matter of Commitment of Edward S.*, 570 A.2d 917, 925 (N.J. 1990)) (emphasis added). Thus, the Idaho Legislature's incorporation into the Idaho Act of those specific federal tax statutes known as the "Internal Revenue Code of 1986" manifests the legislature's clear intent not to incorporate those provisions of federal tax laws which are not part of the Internal Revenue Code of 1986 as amended, such as the Public Law Election. This is especially true since under *Romriell*, the Idaho Legislature is presumed to know that those off-code provisions were not part of the Internal Revenue Code of 1986 as amended when it incorporated the Internal Revenue Code of 1986 as amended into the Idaho Act on February 6, 2012.

VI. SECTION 301(C) OF PUBLIC LAW 111-312 DOES NOT AMEND THE INTERNAL REVENUE CODE OF 1986.

The Commission takes the untenable position that § 301(c) of Public Law 111-312, the Public Law Election, amended Title 26 of the United States Code for purposes of federal law. (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 12-13.) The Commission's position fails for several reasons. First, 1 U.S.C. § 204(a) presumes that the text set forth in Title 26 as of January 1, 2012 comprises the Internal Revenue Code of 1986 and the Public Law Election is not part of that text. Second, the text of Public Law 111-312 clearly demonstrates that the Public Law Election did not amend or revise any portion of the Internal Revenue Code of 1986. Third, the United States Code classification process and record thereof clearly reveal that the Public Law Election did not amend or become part of the Internal Revenue Code.

A. The Public Law Election's Absence from the Text of Title 26 of the United States Code Means that the Public Law Election Did Not Amend or Become a Part of the Internal Revenue Code of 1986.

Federal statutes are compiled and set forth in the Titles of the United States Code. More specifically, the United States Code is a compilation of the "general and permanent laws" of the United States, arranged into 54 broad titles according to subject matter, which "establish prima facie the laws of the United States." 1 U.S.C. § 204(a). This presumption is applicable to the courts of

every state. *Id.* A statutory note to 1 U.S.C. § 204(a) further explains, "The sections of Title 26, United States Code, ***are identical*** to the sections of the Internal Revenue Code." (Emphasis added). IRC § 7701(a)(29) mirrors this statutory note, defining the "Internal Revenue Code of 1986" as "this title" (i.e., Title 26 of the United States Code).

Idaho's statutory definitions do not conflict with the federal terminology. As previously noted, Idaho Code § 63-3004 defines "Internal Revenue Code" as "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012." Since no Idaho statute defines "the Internal Revenue Code of 1986," section 08 of Rule 010 of the Commission's Income Tax Administrative Rules defaults to the definition of the Internal Revenue Code of 1986 as provided in the Internal Revenue Code, which states that "[t]erms not otherwise defined in the [Idaho Act or the Administrative Rules] shall have the same meaning as is assigned to them by the Internal Revenue Code, including Section 7701 relating to definitions of terms," which includes IRC § 7701(a)(29).

The Public Law Election was not set forth within the text of Title 26 as of January 1, 2012. (*See* explanation at pp. 8-11 of Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment.) The Commission appears to agree with that conclusion, admitting in its memorandum "the verbiage of the election in question was not incorporated within the four corners of the Internal Revenue Code." (Memorandum in Support of Tax Commission's Motion for Summary Judgment, p. 13.) Pursuant to the prima facie presumption of 1 U.S.C. § 204(a), the Internal Revenue Code of 1986, which is comprised of only the subtitles, chapters, subchapters, parts, subparts, sections, clauses, subclauses, items, and subitems set forth at 26 U.S.C. § 1 et seq. does not include the Public Law Election, which is not set forth as part of any such subdivision of Title 26.[3]

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[3] It should be noted that the statutory history and other statutory notes that are sometimes set forth in published version of the United States Code (including Title 26) are not part of the United States Code as they are not included in the text of any portion of the Code from Title to subitem. *See, e.g., Ntakirutimana v. Reno* 184 F.3d 419, 433 (5th Cir. 1999) (DeMoss, J., dissenting) (explaining that § 1342 of Publ. L. No. 104-106 "does not purport to be an amendment to the existing statutes on extradition and it was not codified [but rather] appears in the *United States Code Annotated*

B. The Text of Public Law 111-312 Clearly Demonstrates That Section 301(c) Did Not Amend or Revise Any Portion of the Internal Revenue Code of 1986.

Rather than argue that the Public Law Election is codified in the Internal Revenue Code of 1986, which would be patently impossible given the published text of the United States Code of which the Court should take judicial notice, the Commission instead bases its entire argument on distorting the phrase "as amended" contained in Idaho Code § 63-3004's definition of the Internal Revenue Code. (Memorandum in Support of Tax Commission's Motion for Summary Judgment, pp. 9-12.) Fortunately, Acts of Congress, including Public Law 111-312, utilize clearly defined and easily understood protocols for denoting laws that amend the Internal Revenue Code of 1986.

Section 1(b) of Public Law 111-312 delineates which of its provisions amends the Internal Revenue Code of 1986 as follows:

> AMENDMENT OF 1986 CODE.--Except as otherwise expressly provided, ***whenever in this Act*** an amendment or repeal ***is expressed in terms of an amendment to, or repeal of, a section or other provision***, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Public Law 111-312, section 1(b) (emphasis added). Throughout Public Law 111-312, Congress meticulously notates wherever an Internal Revenue Code provision "is amended by adding" or "is amended by inserting" or "is amended by striking" the specified language. *See, e.g.*, Public Law 111-312, Sections 101, 302, 710, etc. For example, § 202(a) of Public Law 111-312 states "Paragraph (2) of section 26(a) is amended (1) by striking 'or 2009' and inserting '2009, 2010 or 2011.'" Likewise, § 302(e) states "Section 2511 is amended by striking subsection (c)."

The intended effect of these notations is critical. In *United States v. Tourtellot*, 483 B.R. 72, 77-78 (2012), the trustee of a bankrupt cigar manufacturer argued that certain assessments imposed upon tobacco manufacturers under the Fair and Equitable Tobacco Reform Act of 2004 ("FETRA")

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only as a "statutory note".); *In re Olga Coal Co.*, 159 F.3d 62, 67 (2d Cir. 1998) (citing as "not codified" a statutory note to 26 U.S.C. 9701 quoting Congressional findings and policy statements set forth in Pub. L. No. 102-486).

qualified as an additional "tax" excludable under IRC § 5702(*l*)(2)(A) from the sale price used in calculating a federal excise tax on cigars by way of IRC § 5701(a)(2). The Court rejected the bankruptcy trustee's argument that the FETRA assessments constituted a tax, in part, by looking to the text of the American Jobs Creation Act of 2004, Public Law 108-357, under which FETRA was originally enacted. *Id.* at 84-85. The Court cited to language in Section 1(b) of Public Law 108-357—identical *verbatim* to the amendment notation instructions of Section 1(b) of Public Law 111-312—and observed:

> [W]henever [Public Law 108-357] amends or adds a new section intended to be incorporated into the Internal Revenue Code, it names a section or part of the Internal Revenue Code and then states that it '***is amended by inserting*** after section [specified Code section] the following new section' or '***is amended by adding*** at the end the following new section,' ***followed by the new Internal Revenue Code section number and text***.

Id. (emphasis added) (some alterations in original). The Court further noted that the section of Public Law 108-357 enacting FETRA "***makes no reference*** that it is 'amending' or 'repealing' anything" and concluded, "***Congress's stated means*** for identifying when provisions of [Public Law 108-357] should be construed as amendments to the Internal Revenue Code is simply not employed in the FETRA-related provisions at issue here." *Id.* (emphasis added).

Here, it is clear that many sections of Public Law 111-312 amend the Internal Revenue Code of 1986 using "Congress's stated means" required under Section 1(b) of Public Law 111-312. However, the text of the Public Law Election set forth in § 301(c) of Public Law 111-312 is not one of the sections that amend the Internal Revenue Code.[4] The complete text of § 301(c) reads as follows:

> SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.--Notwithstanding subsection (a), in the case of an estate of a decedent dying

[4] Section 301(d) of Public Law 111-312 provides another example of an off-code provision that does not amend the Internal Revenue Code and was, therefore, not included within the text of Title 26. For convenience, a complete copy of Public Law 111-312 is included as Appendix "A" of this Brief.

> after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

Clearly the text of § 301(c) "makes no reference" that it is amending any provision of the Internal Revenue Code of 1986. Rather, the Public Law Election simply offers estates of decedents dying in 2010 with a federal-level *quid pro quo* where an estate may choose to forego the current payment of Federal Estate Tax in exchange for paying higher Federal Income Tax in the future. The Commission's statement that "[t]he very language of the Public Law at issue here states that it 'amends' the Internal Revenue Code" (Memorandum in Support of Tax Commission's Motion for Summary Judgment, p. 12) is misleading and borders on misrepresentation. The critical issue in this case is whether § 301(c) amends and becomes part of the Internal Revenue Code of 1986, not whether any other provisions of Public Law 111-312 amend or become part of the Internal Revenue Code. In support of its baseless claim, the Commission cites § 301(b) of Public Law 111-312, which expressly states that "section 2505(a) ***of the Internal Revenue Code of 1986 is amended*** to read as such paragraph would read if section 521(b)(2) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted." (Emphasis added). However, unlike § 301(c), which did not amend or otherwise codify the Public Law Election into the Internal Revenue Code of 1986, § 301(b) did indeed change the text of IRC § 2505(a)(1), which no longer contains the language that was added under § 521(b)(2) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16.[5]

[5] The Commission's comparison to the "Amendments to the U.S. Constitution" is equally

Finally, a review of the version of Title 26 §§ 1014, 1022, and 2001 (the sections of the Internal Revenue Code relevant to this case) as published in the United States Code Annotated ("U.S.C.A.") (West) conclusively confirms that § 301(c) of Public Law 111-312 did not amend Title 26. The U.S.C.A. compilation of Title 26 sets forth a "Credit(s)" (i.e. "Text Amendments") section following the statutory text of each actual section of Title 26. The Credit(s) section for § 1014 (Basis of Property Acquired by a Decedent) indicates the section was amended by § 301(a) of Public Law 111-312. The Credit(s) section of repealed § 1022 indicates the section was repealed by § 301(a) of Public Law 111-312. The Credit(s) Section for § 2001 (imposition of the Federal Estate Tax) indicates the section was amended by §§ 302(a)(2) and 302(d)(1) of Public Law 111-312 when making an amendment to the Internal Revenue Code of 1986. However, § 301(c) of Public Law 111-312 is not identified in the Credit(s) section of any Internal Revenue Code section as making an amendment to any section of Title 26. The full text of §§ 1014, 1022, and 2001 along with the Credit(s) as printed by West (Thomson Reuters Corporation) is attached as an Appendix "B" to this Answering Brief.

C. The Federal Code Classification Process and Record Thereof Clearly Demonstrate That the Public Law Election Did Not Amend or Become Part of the Internal Revenue Code of 1986.

Public laws passed by Congress and signed by the President are compiled in the collection of laws known as the United States Statutes at Large. 1 U.S.C. § 112. Because it would be nearly impossible to research tax legislation in the Statutes at Large, the Office of the Law Revision Counsel of the U.S. House of Representatives ("OLRC") is responsible for classifying "newly enacted

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meritless. There is a specifically prescribed procedure for amending the U.S. Constitution which includes approval of proposed amendments by two-thirds of the U.S. House of Representatives and U.S. Senate, as well as ratification by 2/3 of State Legislatures. U.S. Const. art. V. Constitutional amendments obviously comply with that procedure. As indicated, herein, there is also a "clearly stated means" by which Congress amends the Internal Revenue Code. Unlike the amendments to the U.S. Constitution, § 301(c) of Public Law 111-312 did not amend the United States Code because Congress did not use or follow the specifically prescribed procedure for amending the Internal Revenue Code through § 301(c).

provisions of law to the proper positions in the Code" and to periodically prepare and publish new editions of the United States Code along with annual cumulative supplements reflecting newly enacted laws. 2 U.S.C. § 285b. The OLRC classifies the portions of public laws to the United States Code that are "general and permanent" in nature. *Id.* Provisions of public laws that amend titles of the U.S. Code (including Title 26) previously determined to be general and permanent in nature, are by definition general and permanent in nature. If the OLRC does not classify a portion of a public law to Title 26, that portion of the public law does not become part of Title 26 and does not amend it.

Here, the OLRC has confirmed that the Public Law Election's absence from the Internal Revenue Code of 1986 was deliberate and consistent with the OLRC's responsibilities. Ralph V. Seep, the current Law Revision Counsel, has explained that the Public Law Election was "classified as a statutory note under section 2001 of Title 26 of the United States Code" by the Office of the Law Revision Counsel. *See* (**Appendix "A"** (Affidavit of Ralph V. Seep) to Affidavit of Nicholas S. Marshall in Response to Defendant's Motion for Summary Judgment.) A freestanding provision of a Public Law that does not amend a Title of the United States Code is often included as a statutory note to the section of the United States Code to which it relates. Although such a provision is compiled as part of the United States Statutes at Large and is binding federal law, it is not properly codified as part of or as an amendment to the United States Code. *See, e.g., Ntakirutimana v. Reno* 184 F.3d 419, 433 (5th Cir. 1999) (DeMoss, J., dissenting) (noting that § 1342 of the National Defense Authorization Act, Publ. L. No. 104-106 "does not purport to be an amendment to the existing statutes on extradition and it was not codified [but rather] appears in the *United States Code Annotated* only as a "statutory note".); *In re Olga Coal Co.*, 159 F.3d 62, 67 (2d Cir. 1998) (citing as "not codified" a statutory note to 26 U.S.C. 9701 that quotes "Congressional Findings and Declaration of Policy" articulated in Pub. L. No. 102-486). In the case before this Court, the Public Law Election is set forth in the United States Statutes At Large and is, therefore, binding on the Estate as a matter of general federal tax law. However, because the Public Law Election did not amend the Internal Revenue Code it was not codified as part of the Internal Revenue Code of 1986.

Appropriately, therefore, the Public Law Election was not included in Title 26 of the United States Code and, consequently, was not incorporated into the Idaho Act.

VII. CONCLUSION

As discussed above, the Commission's arguments are not supported by the clear, plain, usual, and ordinary meaning of the Idaho Act. Furthermore, the provisions of the Idaho Act must be construed by this Court "as favorably as possible to [the Estate] and strictly against [the Commission]." *J.R. Simplot, Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 285, 295 (1968)). Therefore, Plaintiff, the Estate of Zippora Stahl, Deceased, respectfully requests this Court DENY the Idaho State Tax Commission's Motion for Summary Judgment.

DATED this 17th day of July, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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Appendix "A"

PL 111-312, December 17, 2010, 124 Stat 3296

UNITED STATES PUBLIC LAWS

111th Congress - Second Session

Convening January 05, 2010

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 111–312 [HR 4853]
December 17, 2010
TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

An Act To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

<< 26 USCA § 1 NOTE >>

(a) SHORT TITLE.--This Act may be cited as the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010".

(b) AMENDMENT OF 1986 CODE.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.--The table of contents for this Act is as follows:

*3298

TITLE I--TEMPORARY EXTENSION OF TAX RELIEF

SEC. 101. TEMPORARY EXTENSION OF 2001 TAX RELIEF.

(a) TEMPORARY EXTENSION.--

<< 26 USCA § 1 NOTE >>

(1) IN GENERAL.--Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking "December 31, 2010" both places it appears and inserting "December 31, 2012".

<< 26 USCA § 1 NOTE >>

(2) EFFECTIVE DATE.--The amendment made by this subsection shall take effect as if included in the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(b) SEPARATE SUNSET FOR EXPANSION OF ADOPTION BENEFITS UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT.--

<< 26 USCA § 1 NOTE >>

<< 31 USCA § 1324 >>

<< 26 USCA prec. § 31 >>

<< 26 USCA §§ 21, 23, 24, 25, 25A, 25B, 26, 30, 30B, 30D, 36C, 137, 904, 1016, 1400C, 6211 >>

<< 26 USCA § 36C >>

<< 26 USCA § 23 >>

(1) IN GENERAL.--Subsection (c) of section 10909 of the Patient Protection and Affordable Care Act is amended to read as follows:

"(c) SUNSET PROVISION.--Each provision of law amended by this section is amended to read as such provision would read if this section had never been enacted. The amendments made by the preceding sentence shall apply to taxable years beginning after December 31, 2011.".

<< 26 USCA § 1 NOTE >>

(2) CONFORMING AMENDMENT.--Subsection (d) of section 10909 of such Act is amended by striking "The amendments" and inserting "Except as provided in subsection (c), the amendments".

SEC. 102. TEMPORARY EXTENSION OF 2003 TAX RELIEF.

<< 26 USCA § 1 NOTE >>

(a) IN GENERAL.--Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking "December 31, 2010" and inserting "December 31, 2012".

***3299**

<< 26 USCA § 1 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall take effect as if included in the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003.

SEC. 103. TEMPORARY EXTENSION OF 2009 TAX RELIEF.

(a) AMERICAN OPPORTUNITY TAX CREDIT.--

<< 26 USCA § 25A >>

(1) IN GENERAL.--Section 25A(i) is amended by striking "or 2010" and inserting ", 2010, 2011, or 2012".

<< 26 USCA § 25A NOTE >>

(2) TREATMENT OF POSSESSIONS.--Section 1004(c)(1) of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking "and 2010" each place it appears and inserting ", 2010, 2011, and 2012".

<< 26 USCA § 24 >>

(b) CHILD TAX CREDIT.--Section 24(d)(4) is amended--

(1) by striking "2009 AND 2010" in the heading and inserting "2009, 2010, 2011, AND 2012", and

(2) by striking "or 2010" and inserting ", 2010, 2011, or 2012".

<< 26 USCA § 32 >>

(c) EARNED INCOME TAX CREDIT.--Section 32(b)(3) is amended--

(1) by striking "2009 AND 2010" in the heading and inserting "2009, 2010, 2011, AND 2012", and

(2) by striking "or 2010" and inserting ", 2010, 2011, or 2012".

<< 26 USCA § 24 NOTE >>

(d) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

TITLE II--TEMPORARY EXTENSION OF INDIVIDUAL AMT RELIEF

SEC. 201. TEMPORARY EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

<< 26 USCA § 55 >>

(a) IN GENERAL.--Paragraph (1) of section 55(d) is amended--

(1) by striking "$70,950" and all that follows through "2009" in subparagraph (A) and inserting "$72,450 in the case of taxable years beginning in 2010 and $74,450 in the case of taxable years beginning in 2011", and

(2) by striking "$46,700" and all that follows through "2009" in subparagraph (B) and inserting "$47,450 in the case of taxable years beginning in 2010 and $48,450 in the case of taxable years beginning in 2011".

<< 26 USCA § 55 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

<< 26 USCA § 1 NOTE >>

(c) REPEAL OF EGTRRA SUNSET.--Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to title VII of such Act (relating to alternative minimum tax).

SEC. 202. TEMPORARY EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

<< 26 USCA § 26 >>

(a) IN GENERAL.--Paragraph (2) of section 26(a) is amended--

(1) by striking "or 2009" and inserting "2009, 2010, or 2011", and

(2) by striking "2009" in the heading thereof and inserting "2011".

<< 26 USCA § 26 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

***3300**

TITLE III--TEMPORARY ESTATE TAX RELIEF

SEC. 301. REINSTATEMENT OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

<< 26 USCA §§ 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 6018, 6019, 6075, 7701 >>

<< 26 USCA prec. § 681 >>

<< 26 USCA prec. § 1011 >>

<< 26 USCA prec. § 1031 >>

<< 26 USCA prec. § 2201 >>

<< 26 USCA prec. § 2661 >>

<< 26 USCA prec. § 6011 >>

<< 26 USCA prec. § 6018 >>

<< 26 USCA prec. § 6671 >>

<< 26 USCA §§ 1022, 2210, 2664, 6717 >>

(a) IN GENERAL.--Each provision of law amended by subtitle A or E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended to read as such provision would read if such subtitle had never been enacted.

<< 26 USCA § 2505 >>

<< 26 USCA § 2505 NOTE >>

(b) CONFORMING AMENDMENT.--On and after January 1, 2011, paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 is amended to read as such paragraph would read if section 521(b)(2) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

<< 26 USCA § 2001 NOTE >>

(c) SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.--Notwithstanding subsection (a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

<< 26 USCA § 6075 NOTE >>

(d) EXTENSION OF TIME FOR PERFORMING CERTAIN ACTS.--

(1) ESTATE TAX.--In the case of the estate of a decedent dying after December 31, 2009, and before the date of the enactment of this Act, the due date for--

(A) filing any return under section 6018 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) as such section is in effect after the date of the enactment of this Act without regard to any election under subsection (c),

(B) making any payment of tax under chapter 11 of such Code, and

(C) making any disclaimer described in section 2518(b) of such Code of an interest in property passing by reason of the death of such decedent,

shall not be earlier than the date which is 9 months after the date of the enactment of this Act.

(2) GENERATION–SKIPPING TAX.--In the case of any generation-skipping transfer made after December 31, 2009, and before the date of the enactment of this Act, the due date for filing any return under section 2662 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) shall not be earlier than the date which is 9 months after the date of the enactment of this Act.

***3301**

<< 26 USCA § 121 NOTE >>

(e) EFFECTIVE DATE.--Except as otherwise provided in this section, the amendments made by this section shall apply to estates of decedents dying, and transfers made, after December 31, 2009.

SEC. 302. MODIFICATIONS TO ESTATE, GIFT, AND GENERATION–SKIPPING TRANSFER TAXES.

(a) MODIFICATIONS TO ESTATE TAX.--

<< 26 USCA § 2010 >>

(1) $5,000,000 APPLICABLE EXCLUSION AMOUNT--Subsection (c) of section 2010 is amended to read as follows:

"(c) APPLICABLE CREDIT AMOUNT.--

"(1) IN GENERAL.--For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

"(2) APPLICABLE EXCLUSION AMOUNT.--

"(A) IN GENERAL.--For purposes of this subsection, the applicable exclusion amount is $5,000,000.

"(B) INFLATION ADJUSTMENT.--In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

<< 26 USCA § 2001 >>

(2) MAXIMUM ESTATE TAX RATE EQUAL TO 35 PERCENT.--Subsection (c) of section 2001 is amended--

(A) by striking "Over $500,000" and all that follows in the table contained in paragraph (1) and inserting the following:

"Over $500,000	$155,800, plus 35 percent of the excess of such amount over $500,000.",

(B) by striking "(1) IN GENERAL.--", and

(C) by striking paragraph (2).

(b) MODIFICATIONS TO GIFT TAX.--

(1) RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.--

<< 26 USCA § 2505 >>

(A) IN GENERAL.--Paragraph (1) of section 2505(a), after the application of section 301(b), is amended by striking "(determined as if the applicable exclusion amount were $1,000,000)".

<< 26 USCA § 2505 NOTE >>

(B) EFFECTIVE DATE.--The amendment made by this paragraph shall apply to gifts made after December 31, 2010.

<< 26 USCA § 2502 >>

<< 26 USCA § 2502 NOTE >>

(2) MODIFICATION OF GIFT TAX RATE.--On and after January 1, 2011, subsection (a) of section 2502 is amended to read as such subsection would read if section 511(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

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<< 26 USCA § 2641 NOTE >>

(c) MODIFICATION OF GENERATION–SKIPPING TRANSFER TAX.--In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.

(d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN CREDIT RESULTING FROM DIFFERENT TAX RATES.--

(1) ESTATE TAX.--

<< 26 USCA § 2001 >>

(A) IN GENERAL.--Section 2001(b)(2) is amended by striking "if the provisions of subsection (c) (as in effect at the decedent's death)" and inserting "if the modifications described in subsection (g)".

<< 26 USCA § 2001 >>

(B) MODIFICATIONS.--Section 2001 is amended by adding at the end the following new subsection:

"(g) MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.--For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute--

"(1) the tax imposed by chapter 12 with respect to such gifts, and

"(2) the credit allowed against such tax under section 2505, including in computing--

"(A) the applicable credit amount under section 2505(a)(1), and

"(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).".

<< 26 USCA § 2505 >>

(2) GIFT TAX.--Section 2505(a) is amended by adding at the end the following new flush sentence:

"For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.".

<< 26 USCA § 2511 >>

(e) CONFORMING AMENDMENT.--Section 2511 is amended by striking subsection (c).

<< 26 USCA § 2001 NOTE >>

(f) EFFECTIVE DATE.--Except as otherwise provided in this subsection, the amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

SEC. 303. APPLICABLE EXCLUSION AMOUNT INCREASED BY UNUSED EXCLUSION AMOUNT OF DECEASED SPOUSE.

<< 26 USCA § 2010 >>

(a) IN GENERAL.--Section 2010(c), as amended by section 302(a), is amended by striking paragraph (2) and inserting the following new paragraphs:

"(2) APPLICABLE EXCLUSION AMOUNT.--For purposes of this subsection, the applicable exclusion amount is the sum of--

"(A) the basic exclusion amount, and

"(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

<< 26 USCA § 2010 >>

"(3) BASIC EXCLUSION AMOUNT.--

"(A) IN GENERAL.--For purposes of this subsection, the basic exclusion amount is $5,000,000.

"(B) INFLATION ADJUSTMENT.--In the case of any decedent dying in a calendar year after 2011, the dollar ***3303** amount in subparagraph (A) shall be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

<< 26 USCA § 2010 >>

"(4) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.--For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term 'deceased spousal unused exclusion amount' means the lesser of--

"(A) the basic exclusion amount, or

"(B) the excess of--

"(i) the basic exclusion amount of the last such deceased spouse of such surviving spouse, over

"(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

<< 26 USCA § 2010 >>

"(5) SPECIAL RULES.--

"(A) ELECTION REQUIRED.--A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

"(B) EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.--Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

<< 26 USCA § 2010 >>

"(6) REGULATIONS.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.".

(b) CONFORMING AMENDMENTS.--

<< 26 USCA § 2505 >>

(1) Paragraph (1) of section 2505(a), as amended by section 302(b)(1), is amended to read as follows:

"(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by".

<< 26 USCA § 2631 >>

(2) Section 2631(c) is amended by striking "the applicable exclusion amount" and inserting "the basic exclusion amount".

<< 26 USCA § 6018 >>

(3) Section 6018(a)(1) is amended by striking "applicable exclusion amount" and inserting "basic exclusion amount".

<< 26 USCA § 2010 NOTE >>

(c) EFFECTIVE DATES.--

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(1) IN GENERAL.--Except as provided in paragraph (2), the amendments made by this section shall apply to estates of decedents dying and gifts made after December 31, 2010.

(2) CONFORMING AMENDMENT RELATING TO GENERATION-SKIPPING TRANSFERS.--The amendment made by subsection (b)(2) shall apply to generation-skipping transfers after December 31, 2010.

<< 26 USCA § 121 NOTE >>

SEC. 304. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall apply to the amendments made by this title.

TITLE IV--TEMPORARY EXTENSION OF INVESTMENT INCENTIVES

SEC. 401. EXTENSION OF BONUS DEPRECIATION; TEMPORARY 100 PERCENT EXPENSING FOR CERTAIN BUSINESS ASSETS.

<< 26 USCA § 168 >>

(a) IN GENERAL.--Paragraph (2) of section 168(k) is amended--

(1) by striking "January 1, 2012" in subparagraph (A)(iv) and inserting "January 1, 2014", and

(2) by striking "January 1, 2011" each place it appears and inserting "January 1, 2013".

<< 26 USCA § 168 >>

(b) TEMPORARY 100 PERCENT EXPENSING.--Subsection (k) of section 168 is amended by adding at the end the following new paragraph:

"(5) SPECIAL RULE FOR PROPERTY ACQUIRED DURING CERTAIN PRE–2012 PERIODS.--In the case of qualified property acquired by the taxpayer (under rules similar to the rules of clauses (ii) and (iii) of paragraph (2)(A)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in subparagraph (2)(B) or (2)(C)), paragraph (1)(A) shall be applied by substituting '100 percent' for '50 percent'.".

(c) EXTENSION OF ELECTION TO ACCELERATE THE AMT CREDIT IN LIEU OF BONUS DEPRECIATION.--

<< 26 USCA § 168 >>

(1) EXTENSION.--Clause (iii) of section 168(k)(4)(D) is amended by striking "or production" and all that follows and inserting "or production--

"(I) after March 31, 2008, and before January 1, 2010, and

"(II) after December 31, 2010, and before January 1, 2013, shall be taken into account under subparagraph (B)(ii) thereof,".

<< 26 USCA § 168 >>

(2) RULES FOR ROUND 2 EXTENSION PROPERTY.--Paragraph (4) of section 168(k) is amended by adding at the end the following new subparagraph:

"(I) SPECIAL RULES FOR ROUND 2 EXTENSION PROPERTY.--

"(i) IN GENERAL.--In the case of round 2 extension property, this paragraph shall be applied without regard to--

"(I) the limitation described in subparagraph (B)(i) thereof, and

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"(II) the business credit increase amount under subparagraph (E)(iii) thereof.

"(ii) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.--In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, or a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008--

"(I) the taxpayer may elect not to have this paragraph apply to round 2 extension property, but

"(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 2 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 2 extension property.

"(iii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.--In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008--

"(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2010, and each subsequent taxable year, and

"(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 2 extension property.

"(iv) ROUND 2 EXTENSION PROPERTY.--For purposes of this subparagraph, the term 'round 2 extension property' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 401(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (and the application of such extension to this paragraph pursuant to the amendment made by section 401(c)(1) of such Act).".

(d) CONFORMING AMENDMENTS.--

<< 26 USCA § 168 >>

(1) The heading for subsection (k) of section 168 is amended by striking "January 1, 2011" and inserting "January 1, 2013".

<< 26 USCA § 168 >>

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking "PRE–JANUARY 1, 2011" and inserting "PRE–JANUARY 1, 2013".

(3) Subparagraph (D) of section 168(k)(4) is amended--

<< 26 USCA § 168 >>

(A) by striking clauses (iv) and (v),

<< 26 USCA § 168 >>

(B) by inserting "and" at the end of clause (ii), and

<< 26 USCA § 168 >>

(C) by striking the comma at the end of clause (iii) and inserting a period.

(4) Paragraph (5) of section 168(l) is amended--

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<< 26 USCA § 168 >>

(A) by inserting "and" at the end of subparagraph (A),

<< 26 USCA § 168 >>

(B) by striking subparagraph (B), and

<< 26 USCA § 168 >>

(C) by redesignating subparagraph (C) as subparagraph (B).

<< 26 USCA § 168 >>

(5) Subparagraph (C) of section 168(n)(2) is amended by striking "January 1, 2011" and inserting "January 1, 2013".

<< 26 USCA § 1400L >>

(6) Subparagraph (D) of section 1400L(b)(2) is amended by striking "January 1, 2011" and inserting "January 1, 2013".

<< 26 USCA § 1400N >>

(7) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2011" and inserting "January 1, 2013".

<< 26 USCA § 168 NOTE >>

(e) EFFECTIVE DATES.--

(1) IN GENERAL.--Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2010, in taxable years ending after such date.

(2) TEMPORARY 100 PERCENT EXPENSING.--The amendment made by subsection (b) shall apply to property placed in service after September 8, 2010, in taxable years ending after such date.

SEC. 402. TEMPORARY EXTENSION OF INCREASED SMALL BUSINESS EXPENSING.

<< 26 USCA § 179 >>

(a) DOLLAR LIMITATION.--Section 179(b)(1) is amended by striking "and" at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

<< 26 USCA § 179 >>

"(C) $125,000 in the case of taxable years beginning in 2012, and

<< 26 USCA § 179 >>

"(D) $25,000 in the case of taxable years beginning after 2012.".

<< 26 USCA § 179 >>

(b) REDUCTION IN LIMITATION.--Section 179(b)(2) is amended by striking "and" at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

<< 26 USCA § 179 >>

"(C) $500,000 in the case of taxable years beginning in 2012, and

<< 26 USCA § 179 >>

"(D) $200,000 in the case of taxable years beginning after 2012.".

<< 26 USCA § 179 >>

(c) INFLATION ADJUSTMENT.--Subsection (b) of section 179 is amended by adding at the end the following new paragraph:

"(6) INFLATION ADJUSTMENT.--

"(A) IN GENERAL.--In the case of any taxable year beginning in calendar year 2012, the $125,000 and $500,000 amounts in paragraphs (1)(C) and (2)(C) shall each be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2006' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.--

"(i) DOLLAR LIMITATION.--If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

"(ii) PHASEOUT AMOUNT.--If the amount in paragraph (2) as increased under subparagraph (A) is not ***3307** a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

<< 26 USCA § 179 >>

(d) COMPUTER SOFTWARE.--Section 179(d)(1)(A)(ii) is amended by striking "2012" and inserting "2013".

<< 26 USCA § 179 >>

(e) CONFORMING AMENDMENT.--Section 179(c)(2) is amended by striking "2012" and inserting "2013".

<< 26 USCA § 179 NOTE >>

(f) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

TITLE V--TEMPORARY EXTENSION OF UNEMPLOYMENT INSURANCE AND RELATED MATTERS

SEC. 501. TEMPORARY EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

<< 26 USCA § 3304 NOTE >>

(a) IN GENERAL.--(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended--

(A) by striking "November 30, 2010" each place it appears and inserting "January 3, 2012";

(B) in the heading for subsection (b)(2), by striking "NOVEMBER 30, 2010" and inserting "JANUARY 3, 2012"; and

(C) in subsection (b)(3), by striking "April 30, 2011" and inserting "June 9, 2012".

<< 26 USCA § 3304 NOTE >>

(2) SECTION 2005 OF THE ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES ACT, AS CONTAINED IN PUBLIC LAW 111–5 (26 U.S.C. 3304 NOTE; 123 STAT. 444), IS AMENDED.--

(A) by striking "December 1, 2010" each place it appears and inserting "January 4, 2012"; and

(B) in subsection (c), by striking "May 1, 2011" and inserting "June 11, 2012".

<< 26 USCA § 3304 NOTE >>

(3) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking "April 30, 2011" and inserting "June 10, 2012".

<< 26 USCA § 3304 NOTE >>

(b) FUNDING.--Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended--

(1) in subparagraph (E), by striking "and" at the end; and

(2) by inserting after subparagraph (F) the following:

"(G) the amendments made by section 501(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; and".

<< 26 USCA § 3304 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2010 (Public Law 111–205).

SEC. 502. TEMPORARY MODIFICATION OF INDICATORS UNDER THE EXTENDED BENEFIT PROGRAM.

<< 26 USCA § 3304 NOTE >>

(a) INDICATOR.--Section 203(d) of the Federal–State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended, in the flush matter following paragraph (2), by inserting after the first sentence the following sentence: "Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance ***3308** Reauthorization, and Job Creation Act of 2010 (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'two' were 'three' in subparagraph (1)(A).".

<< 26 USCA § 3304 NOTE >>

(b) ALTERNATIVE TRIGGER.--Section 203(f) of the Federal–State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended--

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'either' were 'any', the word 'both' were 'all', and the figure '2' were '3' in clause (1)(A)(ii).".

SEC. 503. TECHNICAL AMENDMENT RELATING TO COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS.

<< 26 USCA § 6402 >>

(a) IN GENERAL.--Section 6402(f)(3)(C), as amended by section 801 of the Claims Resolution Act of 2010, is amended by striking "is not a covered unemployment compensation debt" and inserting "is a covered unemployment compensation debt".

<< 26 USCA § 6402 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall take effect as if included in section 801 of the Claims Resolution Act of 2010.

SEC. 504. TECHNICAL CORRECTION RELATING TO REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.

<< 19 USCA § 1675C NOTE >>

(a) IN GENERAL.--Section 822(2)(A) of the Claims Resolution Act of 2010 is amended by striking "or" and inserting "and".

<< 19 USCA § 1675C NOTE >>

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall take effect as if included in the provisions of the Claims Resolution Act of 2010.

SEC. 505. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

<< 45 USCA § 352 >>

(a) EXTENSION.--Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111–92), is amended--

(1) by striking "June 30, 2010" and inserting "June 30, 2011"; and

(2) by striking "December 31, 2010" and inserting "December 31, 2011".

(b) CLARIFICATION ON AUTHORITY TO USE FUNDS.--Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended ***3309** unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of the enactment of this Act.

TITLE VI--TEMPORARY EMPLOYEE PAYROLL TAX CUT

<< 26 USCA § 1401 NOTE >>

SEC. 601. TEMPORARY EMPLOYEE PAYROLL TAX CUT.

(a) IN GENERAL.--Notwithstanding any other provision of law--

(1) with respect to any taxable year which begins in the payroll tax holiday period, the rate of tax under section 1401(a) of the Internal Revenue Code of 1986 shall be 10.40 percent, and

(2) with respect to remuneration received during the payroll tax holiday period, the rate of tax under 3101(a) of such Code shall be 4.2 percent (including for purposes of determining the applicable percentage under sections 3201(a) and 3211(a)(1) of such Code).

(b) COORDINATION WITH DEDUCTIONS FOR EMPLOYMENT TAXES.--

(1) DEDUCTION IN COMPUTING NET EARNINGS FROM SELF–EMPLOYMENT.--For purposes of applying section 1402(a)(12) of the Internal Revenue Code of 1986, the rate of tax imposed by subsection 1401(a) of such Code shall be determined without regard to the reduction in such rate under this section.

(2) INDIVIDUAL DEDUCTION.--In the case of the taxes imposed by section 1401 of such Code for any taxable year which begins in the payroll tax holiday period, the deduction under section 164(f) with respect to such taxes shall be equal to the sum of--

(A) 59.6 percent of the portion of such taxes attributable to the tax imposed by section 1401(a) (determined after the application of this section), plus

(B) one-half of the portion of such taxes attributable to the tax imposed by section 1401(b).

(c) PAYROLL TAX HOLIDAY PERIOD.--The term "payroll tax holiday period" means calendar year 2011.

(d) EMPLOYER NOTIFICATION.--The Secretary of the Treasury shall notify employers of the payroll tax holiday period in any manner the Secretary deems appropriate.

(e) TRANSFERS OF FUNDS.--

(1) TRANSFERS TO FEDERAL OLD–AGE AND SURVIVORS INSURANCE TRUST FUND.--There are hereby appropriated to the Federal Old–Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

(2) TRANSFERS TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.--There are hereby appropriated to the Social Security ***3310** Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a)(2). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Account had such amendments not been enacted.

(3) COORDINATION WITH OTHER FEDERAL LAWS.--For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the rate of tax in effect under section 3101(a) of such Code shall be determined without regard to the reduction in such rate under this section.

TITLE VII--TEMPORARY EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A--Energy

SEC. 701. INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.

<< 26 USCA § 40A >>

(a) CREDITS FOR BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.--Subsection (g) of section 40A is amended by striking "December 31, 2009" and inserting "December 31, 2011".

(b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.--

<< 26 USCA § 6426 >>

(1) Paragraph (6) of section 6426(c) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 6427 >>

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 6426 NOTE >>

(c) SPECIAL RULE FOR 2010.--Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180–day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.

<< 26 USCA § 40A NOTE >>

(d) EFFECTIVE DATE.--The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

***3311**

SEC. 702. CREDIT FOR REFINED COAL FACILITIES.

<< 26 USCA § 45 >>

(a) IN GENERAL.--Subparagraph (B) of section 45(d)(8) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 45 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to facilities placed in service after December 31, 2009.

SEC. 703. NEW ENERGY EFFICIENT HOME CREDIT.

<< 26 USCA § 45L >>

(a) IN GENERAL.--Subsection (g) of section 45L is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 45L NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to homes acquired after December 31, 2009.

SEC. 704. EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.

<< 26 USCA § 6426 >>

<< 26 USCA § 6426 >>

<< 26 USCA § 6427 >>

(a) IN GENERAL.--Sections 6426(d)(5), 6426(e)(3), and 6427(e)(6)(C) are each amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 6426 >>

(b) EXCLUSION OF BLACK LIQUOR FROM CREDIT ELIGIBILITY.--The last sentence of section 6426(d)(2) is amended by striking "or biodiesel" and inserting "biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp".

<< 26 USCA § 6426 NOTE >>

(c) SPECIAL RULE FOR 2010.--Notwithstanding any other provision of law, in the case of any alternative fuel credit or any alternative fuel mixture credit properly determined under subsection (d) or (e) of section 6426 of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180–day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.

<< 26 USCA § 6426 NOTE >>

(d) EFFECTIVE DATE.--The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

SEC. 705. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

<< 26 USCA § 451 >>

(a) IN GENERAL.--Paragraph (3) of section 451(i) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 451 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to dispositions after December 31, 2009.

SEC. 706. SUSPENSION OF LIMITATION ON PERCENTAGE DEPLETION FOR OIL AND GAS FROM MARGINAL WELLS.

<< 26 USCA § 613A >>

(a) IN GENERAL.--Clause (ii) of section 613A(c)(6)(H) is amended by striking "January 1, 2010" and inserting "January 1, 2012".
***3312**

<< 26 USCA § 613A NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 707. EXTENSION OF GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.

<< 26 USCA § 48 NOTE >>

(a) IN GENERAL.--Subsection (a) of section 1603 of division B of the American Recovery and Reinvestment Act of 2009 is amended--

(1) in paragraph (1), by striking "2009 or 2010" and inserting "2009, 2010, or 2011", and

(2) in paragraph (2)--

(A) by striking "after 2010" and inserting "after 2011", and

(B) by striking "2009 or 2010" and inserting "2009, 2010, or 2011".

<< 26 USCA § 48 NOTE >>

(b) CONFORMING AMENDMENT.--Subsection (j) of section 1603 of division B of such Act is amended by striking "2011" and inserting "2012".

SEC. 708. EXTENSION OF PROVISIONS RELATED TO ALCOHOL USED AS FUEL.

(a) EXTENSION OF INCOME TAX CREDIT FOR ALCOHOL USED AS FUEL.--

<< 26 USCA § 40 >>

(1) IN GENERAL.--Paragraph (1) of section 40(e) is amended--

(A) by striking "December 31, 2010" in subparagraph (A) and inserting "December 31, 2011", and

(B) by striking "January 1, 2011" in subparagraph (B) and inserting "January 1, 2012".

<< 26 USCA § 40 >>

(2) REDUCED AMOUNT FOR ETHANOL BLENDERS.--Subsection (h) of section 40 is amended by striking "2010" both places it appears and inserting "2011".

<< 26 USCA § 40 NOTE >>

(3) EFFECTIVE DATE.--The amendments made by this subsection shall apply to periods after December 31, 2010.

(b) EXTENSION OF EXCISE TAX CREDIT FOR ALCOHOL USED AS FUEL.--

<< 26 USCA § 6426 >>

(1) IN GENERAL.--Paragraph (6) of section 6426(b) is amended by striking "December 31, 2010" and inserting "December 31, 2011".

<< 26 USCA § 6426 NOTE >>

(2) EFFECTIVE DATE.--The amendment made by this subsection shall apply to periods after December 31, 2010.

(c) EXTENSION OF PAYMENT FOR ALCOHOL FUEL MIXTURE.--

<< 26 USCA § 6427 >>

(1) IN GENERAL.--Subparagraph (A) of section 6427(e)(6) is amended by striking "December 31, 2010" and inserting "December 31, 2011".

<< 26 USCA § 6427 NOTE >>

(2) EFFECTIVE DATE.--The amendment made by this subsection shall apply to sales and uses after December 31, 2010.

(d) EXTENSION OF ADDITIONAL DUTIES ON ETHANOL.--

(1) IN GENERAL.--Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States are each amended in the effective period column by striking "1/1/2011" and inserting "1/1/2012".

(2) EFFECTIVE DATE.--The amendments made by this subsection shall take effect on January 1, 2011.

SEC. 709. ENERGY EFFICIENT APPLIANCE CREDIT.

<< 26 USCA § 45M >>

(a) DISHWASHERS.--Paragraph (1) of section 45M(b) is amended by striking "and" at the end of subparagraph (A), by striking the ***3313** period at the end of subparagraph (B) and inserting a comma, and by adding at the end the following new subparagraphs:

<< 26 USCA § 45M >>

"(C) $25 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

<< 26 USCA § 45M >>

"(D) $50 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 295 kilowatt hours per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings), and

<< 26 USCA § 45M >>

"(E) $75 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 280 kilowatt hours per year and 4 gallons per cycle (4.5 gallons per cycle for dishwashers designed for greater than 12 place settings).".

<< 26 USCA § 45M >>

(b) CLOTHES WASHERS.--Paragraph (2) of section 45M(b) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by adding at the end the following new subparagraphs:

<< 26 USCA § 45M >>

"(E) $175 in the case of a top-loading clothes washer manufactured in calendar year 2011 which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor, and

<< 26 USCA § 45M >>

"(F) $225 In the case of a clothes washer manufactured in calendar year 2011--

"(i) which is a top-loading clothes washer and which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor, or

"(ii) which is a front-loading clothes washer and which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor.".

<< 26 USCA § 45M >>

(c) REFRIGERATORS.--Paragraph (3) of section 45M(b) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by adding at the end the following new subparagraphs:

<< 26 USCA § 45M >>

"(E) $150 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 30 percent less energy than the 2001 energy conservation standards, and

<< 26 USCA § 45M >>

"(F) $200 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 35 percent less energy than the 2001 energy conservation standards.".

(d) REBASING OF LIMITATIONS.--

<< 26 USCA § 45M >>

(1) IN GENERAL.--Paragraph (1) of section 45M(e) is amended--

(A) by striking "$75,000,000" and inserting "$25,000,000", and

(B) by striking "December 31, 2007" and inserting "December 31, 2010".

<< 26 USCA § 45M >>

(2) EXCEPTION FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.--Paragraph (2) of section 45M(e) is amended--

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(A) by striking "subsection (b)(3)(D)" and inserting "subsection (b)(3)(F)", and

(B) by striking "subsection (b)(2)(D)" and inserting "subsection (b)(2)(F)".

<< 26 USCA § 45M >>

(3) GROSS RECEIPTS LIMITATION.--Paragraph (3) of section 45M(e) is amended by striking "2 percent" and inserting "4 percent".

<< 26 USCA § 45M NOTE >>

(e) EFFECTIVE DATES.--

(1) IN GENERAL.--The amendments made by subsections (a), (b), and (c) shall apply to appliances produced after December 31, 2010.

(2) LIMITATIONS.--The amendments made by subsection (d) shall apply to taxable years beginning after December 31, 2010.

SEC. 710. CREDIT FOR NONBUSINESS ENERGY PROPERTY.

<< 26 USCA § 25C >>

(a) EXTENSION.--Section 25C(g)(2) is amended by striking "2010" and inserting "2011".

(b) RETURN TO PRE–ARRA LIMITATIONS AND STANDARDS.--

<< 26 USCA § 25C >>

(1) IN GENERAL.--Subsections (a) and (b) of section 25C are amended to read as follows:

"(a) ALLOWANCE OF CREDIT.--In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of--

"(1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

<< 26 USCA § 25C >>

"(b) LIMITATIONS.--

"(1) LIFETIME LIMITATION.--The credit allowed under this section with respect to any taxpayer for any taxable year shall not exceed the excess (if any) of $500 over the aggregate credits allowed under this section with respect to such taxpayer for all prior taxable years ending after December 31, 2005.

"(2) WINDOWS.--In the case of amounts paid or incurred for components described in subsection (c)(2)(B) by any taxpayer for any taxable year, the credit allowed under this section with respect to such amounts for such year shall not exceed the excess (if any) of $200 over the aggregate credits allowed under this section with respect to such amounts for all prior taxable years ending after December 31, 2005.

"(3) LIMITATION ON RESIDENTIAL ENERGY PROPERTY EXPENDITURES.--The amount of the credit allowed under this section by reason of subsection (a)(2) shall not exceed--

"(A) $50 for any advanced main air circulating fan,

"(B) $150 for any qualified natural gas, propane, or oil furnace or hot water boiler, and

"(C) $300 for any item of energy-efficient building property.".

(2) MODIFICATION OF STANDARDS.--

<< 26 USCA § 25C >>

(A) IN GENERAL.--Paragraph (1) of section 25C(c) is amended by striking "2000" and all that follows through "this section" and inserting "2009 International Energy Conservation Code, as such Code (including supplements) ***3315** is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009".

<< 26 USCA § 25C >>

(B) WOOD STOVES.--Subparagraph (E) of section 25C(d)(3) is amended by striking ", as measured using a lower heating value".

(C) OIL FURNACES AND HOT WATER BOILERS.--

<< 26 USCA § 25C >>

(i) IN GENERAL.--Paragraph (4) of section 25C(d) is amended to read as follows:

"(4) QUALIFIED NATURAL GAS, PROPANE, OR OIL FURNACE OR HOT WATER BOILER.--The term 'qualified natural gas, propane, or oil furnace or hot water boiler' means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.".

<< 26 USCA § 25C >>

(ii) CONFORMING AMENDMENT.--Clause (ii) of section 25C(d)(2)(A) is amended to read as follows:

"(ii) a qualified natural gas, propane, or oil furnace or hot water boiler, or".

(D) EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.--

<< 26 USCA § 25C >>

(i) IN GENERAL.--Subsection (c) of section 25C is amended by striking paragraph (4).

<< 26 USCA § 25C >>

(ii) APPLICATION OF ENERGY STAR STANDARDS.--Paragraph (1) of section 25C(c) is amended by inserting "an exterior window, a skylight, an exterior door," after "in the case of" in the matter preceding subparagraph (A).

<< 26 USCA § 25C >>

(E) INSULATION.--Subparagraph (A) of section 25C(c)(2) is amended by striking "and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009".

<< 26 USCA § 25C >>

(3) SUBSIDIZED ENERGY FINANCING.--Subsection (e) of section 25C is amended by adding at the end the following new paragraph:

"(3) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.--For purposes of determining the amount of expenditures made by any individual with respect to any property, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).".

<< 26 USCA § 25C NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to property placed in service after December 31, 2010.

SEC. 711. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

<< 26 USCA § 30C >>

(a) EXTENSION OF CREDIT.--Paragraph (2) of section 30C(g) is amended by striking "December 31, 2010" and inserting "December 31, 2011.".

<< 26 USCA § 30C NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to property placed in service after December 31, 2010.

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Subtitle B--Individual Tax Relief

SEC. 721. DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

<< 26 USCA § 62 >>

(a) IN GENERAL.--Subparagraph (D) of section 62(a)(2) is amended by striking "or 2009" and inserting "2009, 2010, or 2011".

<< 26 USCA § 62 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 722. DEDUCTION OF STATE AND LOCAL SALES TAXES.

<< 26 USCA § 164 >>

(a) IN GENERAL.--Subparagraph (I) of section 164(b)(5) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 164 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 723. CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

<< 26 USCA § 170 >>

(a) IN GENERAL.--Clause (vi) of section 170(b)(1)(E) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 170 >>

(b) CONTRIBUTIONS BY CERTAIN CORPORATE FARMERS AND RANCHERS.--Clause (iii) of section 170(b)(2)(B) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 170 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

SEC. 724. ABOVE–THE–LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.

<< 26 USCA § 222 >>

(a) IN GENERAL.--Subsection (e) of section 222 is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 222 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 725. TAX–FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

<< 26 USCA § 408 >>

(a) IN GENERAL.--Subparagraph (F) of section 408(d)(8) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 408 NOTE >>

(b) EFFECTIVE DATE; SPECIAL RULE.--

(1) EFFECTIVE DATE.--The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2009.

(2) SPECIAL RULE.--For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010.

SEC. 726. LOOK–THRU OF CERTAIN REGULATED INVESTMENT COMPANY STOCK IN DETERMINING GROSS ESTATE OF NONRESIDENTS.

<< 26 USCA § 2105 >>

(a) IN GENERAL.--Paragraph (3) of section 2105(d) is amended by striking "December 31, 2009" and inserting "December 31, 2011".
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<< 26 USCA § 2105 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to estates of decedents dying after December 31, 2009.

SEC. 727. PARITY FOR EXCLUSION FROM INCOME FOR EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS.

<< 26 USCA § 132 >>

(a) IN GENERAL.--Paragraph (2) of section 132(f) is amended by striking "January 1, 2011" and inserting "January 1, 2012".

<< 26 USCA § 132 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to months after December 31, 2010.

SEC. 728. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

<< 26 USCA § 6409 >>

(a) IN GENERAL.--Subchapter A of chapter 65 is amended by adding at the end the following new section:

"SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

"(a) IN GENERAL.--Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

"(b) TERMINATION.--Subsection (a) shall not apply to any amount received after December 31, 2012.".

<< 26 USCA prec. § 6401 >>

(b) CLERICAL AMENDMENT.--The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 6409. Refunds disregarded in the administration of Federal programs and federally assisted programs.".

<< 26 USCA § 6409 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to amounts received after December 31, 2009.

Subtitle C--Business Tax Relief

SEC. 731. RESEARCH CREDIT.

<< 26 USCA § 41 >>

(a) IN GENERAL.--Subparagraph (B) of section 41(h)(1) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 45C >>

(b) CONFORMING AMENDMENT.--Subparagraph (D) of section 45C(b)(1) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 41 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to amounts paid or incurred after December 31, 2009.

SEC. 732. INDIAN EMPLOYMENT TAX CREDIT.

<< 26 USCA § 45A >>

(a) IN GENERAL.--Subsection (f) of section 45A is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 45A NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 733. NEW MARKETS TAX CREDIT.

(a) IN GENERAL.--Paragraph (1) of section 45D(f) is amended--

<< 26 USCA § 45D >>

(1) by striking "and" at the end of subparagraph (E),
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<< 26 USCA § 45D >>

(2) by striking the period at the end of subparagraph (F), and

<< 26 USCA § 45D >>

(3) by adding at the end the following new subparagraph:

"(G) $3,500,000,000 for 2010 and 2011.".

<< 26 USCA § 45D >>

(b) CONFORMING AMENDMENT.--Paragraph (3) of section 45D(f) is amended by striking "2014" and inserting "2016".

<< 26 USCA § 45D NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to calendar years beginning after 2009.

SEC. 734. RAILROAD TRACK MAINTENANCE CREDIT.

<< 26 USCA § 45G >>

(a) IN GENERAL.--Subsection (f) of section 45G is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 45G NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.

SEC. 735. MINE RESCUE TEAM TRAINING CREDIT.

<< 26 USCA § 45N >>

(a) IN GENERAL.--Subsection (e) of section 45N is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 45N NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 736. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.

<< 26 USCA § 45P >>

(a) IN GENERAL.--Subsection (f) of section 45P is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 45P NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to payments made after December 31, 2009.

SEC. 737. 15–YEAR STRAIGHT–LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.

<< 26 USCA § 168 >>

(a) IN GENERAL.--Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking "January 1, 2010" and inserting "January 1, 2012".

(b) CONFORMING AMENDMENTS.--

<< 26 USCA § 168 >>

(1) Clause (i) of section 168(e)(7)(A) is amended by striking "if such building is placed in service after December 31, 2008, and before January 1, 2010,".

<< 26 USCA § 168 >>

(2) Paragraph (8) of section 168(e) is amended by striking subparagraph (E).

<< 26 USCA § 179 >>

(3) Section 179(f)(2) is amended--

(A) by striking "(without regard to the dates specified in subparagraph (A)(i) thereof)" in subparagraph (B), and

(B) by striking "(without regard to subparagraph (E) thereof)" in subparagraph (C).

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to property placed in service after December 31, 2009.

SEC. 738. 7–YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

<< 26 USCA § 168 >>

(a) IN GENERAL.--Subparagraph (D) of section 168(i)(15) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 168 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to property placed in service after December 31, 2009.

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SEC. 739. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.

<< 26 USCA § 168 >>

(a) IN GENERAL.--Paragraph (8) of section 168(j) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 168 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to property placed in service after December 31, 2009.

SEC. 740. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

<< 26 USCA § 170 >>

(a) IN GENERAL.--Clause (iv) of section 170(e)(3)(C) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 170 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to contributions made after December 31, 2009.

SEC. 741. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORIES TO PUBLIC SCHOOLS.

<< 26 USCA § 170 >>

(a) IN GENERAL.--Clause (iv) of section 170(e)(3)(D) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 170 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to contributions made after December 31, 2009.

SEC. 742. ENHANCED CHARITABLE DEDUCTION FOR CORPORATE CONTRIBUTIONS OF COMPUTER INVENTORY FOR EDUCATIONAL PURPOSES.

<< 26 USCA § 170 >>

(a) IN GENERAL.--Subparagraph (G) of section 170(e)(6) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 170 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

SEC. 743. ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.

<< 26 USCA § 179E >>

(a) IN GENERAL.--Subsection (g) of section 179E is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 179E NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to property placed in service after December 31, 2009.

SEC. 744. SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

<< 26 USCA § 181 >>

(a) IN GENERAL.--Subsection (f) of section 181 is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 181 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to productions commencing after December 31, 2009.

SEC. 745. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

<< 26 USCA § 198 >>

(a) IN GENERAL.--Subsection (h) of section 198 is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 198 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to expenditures paid or incurred after December 31, 2009.

SEC. 746. DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.

(a) IN GENERAL.--Subparagraph (C) of section 199(d)(8) is amended--

<< 26 USCA § 199 >>

(1) by striking "first 4 taxable years" and inserting "first 6 taxable years"; and
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<< 26 USCA § 199 >>

(2) by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 199 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 747. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.

<< 26 USCA § 512 >>

(a) IN GENERAL.--Clause (iv) of section 512(b)(13)(E) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 512 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to payments received or accrued after December 31, 2009.

SEC. 748. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

<< 26 USCA § 871 >>

(a) IN GENERAL.--Paragraphs (1)(C) and (2)(C) of section 871(k) are each amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 871 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 749. RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.

<< 26 USCA § 897 >>

(a) IN GENERAL.--Clause (ii) of section 897(h)(4)(A) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 897 NOTE >>

(b) EFFECTIVE DATE.--

(1) IN GENERAL.--The amendment made by subsection (a) shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.--In the case of a regulated investment company--

(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

SEC. 750. EXCEPTIONS FOR ACTIVE FINANCING INCOME.

<< 26 USCA § 953 >>

<< 26 USCA § 954 >>

(a) IN GENERAL.--Sections 953(e)(10) and 954(h)(9) are each amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 953 >>

(b) CONFORMING AMENDMENT.--Section 953(e)(10) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 953 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

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SEC. 751. LOOK–THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.

<< 26 USCA § 954 >>

(a) IN GENERAL.--Subparagraph (C) of section 954(c)(6) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 954 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

SEC. 752. BASIS ADJUSTMENT TO STOCK OF S CORPS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

<< 26 USCA § 1367 >>

(a) IN GENERAL.--Paragraph (2) of section 1367(a) is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 1367 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

SEC. 753. EMPOWERMENT ZONE TAX INCENTIVES.

(a) IN GENERAL.--Section 1391 is amended--

<< 26 USCA § 1391 >>

(1) by striking "December 31, 2009" in subsection (d)(1)(A)(i) and inserting "December 31, 2011"; and

<< 26 USCA § 1391 >>

(2) by striking the last sentence of subsection (h)(2).

<< 26 USCA § 1202 >>

(b) INCREASED EXCLUSION OF GAIN ON STOCK OF EMPOWERMENT ZONE BUSINESSES.--Subparagraph (C) of section 1202(a)(2) is amended--

(1) by striking "December 31, 2014" and inserting "December 31, 2016"; and

(2) by striking "2014" in the heading and inserting "2016".

<< 26 USCA § 1391 NOTE >>

(c) TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.--In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.

<< 26 USCA § 1202 NOTE >>

(d) EFFECTIVE DATE.--The amendments made by this section shall apply to periods after December 31, 2009.

SEC. 754. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

<< 26 USCA § 1400 >>

(a) IN GENERAL.--Subsection (f) of section 1400 is amended by striking "December 31, 2009" each place it appears and inserting "December 31, 2011".

<< 26 USCA § 1400A >>

(b) TAX–EXEMPT DC EMPOWERMENT ZONE BONDS.--Subsection (b) of section 1400A is amended by striking "December 31, 2009" and inserting "December 31, 2011".

(c) ZERO–PERCENT CAPITAL GAINS RATE.--

<< 26 USCA § 1400B >>

(1) ACQUISITION DATE.--Paragraphs (2)(A)(i), (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section 1400B(b) are each amended by striking "January 1, 2010" and inserting "January 1, 2012".

(2) LIMITATION ON PERIOD OF GAINS.--
***3322**

<< 26 USCA § 1400B >>

(A) IN GENERAL.--Paragraph (2) of section 1400B(e) is amended--

(i) by striking "December 31, 2014" and inserting "December 31, 2016"; and

(ii) by striking "2014" in the heading and inserting "2016".

<< 26 USCA § 1400B >>

(B) PARTNERSHIPS AND S–CORPS.--Paragraph (2) of section 1400B(g) is amended by striking "December 31, 2014" and inserting "December 31, 2016".

<< 26 USCA § 1400C >>

(d) FIRST–TIME HOMEBUYER CREDIT.--Subsection (i) of section 1400C is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 1400 NOTE >>

(e) EFFECTIVE DATES.--

(1) IN GENERAL.--Except as otherwise provided in this subsection, the amendments made by this section shall apply to periods after December 31, 2009.

(2) TAX–EXEMPT DC EMPOWERMENT ZONE BONDS.--The amendment made by subsection (b) shall apply to bonds issued after December 31, 2009.

(3) ACQUISITION DATES FOR ZERO–PERCENT CAPITAL GAINS RATE.--The amendments made by subsection (c) shall apply to property acquired or substantially improved after December 31, 2009.

(4) HOMEBUYER CREDIT.--The amendment made by subsection (d) shall apply to homes purchased after December 31, 2009.

SEC. 755. TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.

<< 26 USCA § 7652 >>

(a) IN GENERAL.--Paragraph (1) of section 7652(f) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 7652 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2009.

SEC. 756. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

<< 26 USCA § 30A NOTE >>

(a) IN GENERAL.--Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended--

(1) by striking "first 4 taxable years" and inserting "first 6 taxable years", and

(2) by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 30A NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 757. WORK OPPORTUNITY CREDIT.

<< 26 USCA § 51 >>

(a) IN GENERAL.--Subparagraph (B) of section 51(c)(4) is amended by striking "August 31, 2011" and inserting "December 31, 2011".

<< 26 USCA § 51 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

SEC. 758. QUALIFIED ZONE ACADEMY BONDS.

<< 26 USCA § 54E >>

(a) IN GENERAL.--Section 54E(c)(1) is amended--

(1) by striking "2008 and" and inserting "2008,", and

(2) by inserting "and $400,000,000 for 2011" after "2010,".

***3323**

<< 26 USCA § 6431 >>

(b) REPEAL OF REFUNDABLE CREDIT FOR QZABS.--Paragraph (3) of section 6431(f) is amended by inserting "determined without regard to any allocation relating to the national zone academy bond limitation for 2011 or any carryforward of such allocation" after "54E)" in subparagraph (A)(iii).

<< 26 USCA § 54E NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to obligations issued after December 31, 2010.

SEC. 759. MORTGAGE INSURANCE PREMIUMS.

<< 26 USCA § 163 >>

(a) IN GENERAL.--Clause (iv) of section 163(h)(3)(E) is amended by striking "December 31, 2010" and inserting "December 31, 2011".

<< 26 USCA § 163 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to amounts paid or accrued after December 31, 2010.

SEC. 760. TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

<< 26 USCA § 1202 >>

(a) IN GENERAL.--Paragraph (4) of section 1202(a) is amended--

(1) by striking "January 1, 2011" and inserting "January 1, 2012", and

(2) by inserting "AND 2011" after "2010" in the heading thereof.

<< 26 USCA § 1202 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to stock acquired after December 31, 2010.

Subtitle D--Temporary Disaster Relief Provisions

PART

Subpart A--New York Liberty Zone

SEC. 761. TAX-EXEMPT BOND FINANCING.

<< 26 USCA § 1400L >>

(a) IN GENERAL.--Subparagraph (D) of section 1400L(d)(2) is amended by striking "January 1, 2010" and inserting "January 1, 2012".

<< 26 USCA § 1400L NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to bonds issued after December 31, 2009.

Subpart B--GO Zone

SEC. 762. INCREASE IN REHABILITATION CREDIT.

<< 26 USCA § 1400N >>

(a) IN GENERAL.--Subsection (h) of section 1400N is amended by striking "December 31, 2009" and inserting "December 31, 2011".

<< 26 USCA § 1400N NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to amounts paid or incurred after December 31, 2009.

<< 26 USCA § 1400N >>

SEC. 763. LOW-INCOME HOUSING CREDIT RULES FOR BUILDINGS IN GO ZONES.

Section 1400N(c)(5) is amended by striking "January 1, 2011" and inserting "January 1, 2012".

***3324**

SEC. 764. TAX-EXEMPT BOND FINANCING.

<< 26 USCA § 1400N >>

(a) IN GENERAL.--Paragraphs (2)(D) and (7)(C) of section 1400N(a) are each amended by striking "January 1, 2011" and inserting "January 1, 2012".

(b) CONFORMING AMENDMENTS.--Sections 702(d)(1) and 704(a) of the Heartland Disaster Tax Relief Act of 2008 are each amended by striking "January 1, 2011" each place it appears and inserting "January 1, 2012".

SEC. 765. BONUS DEPRECIATION DEDUCTION APPLICABLE TO THE GO ZONE.

<< 26 USCA § 1400N >>

(a) IN GENERAL.--Paragraph (6) of section 1400N(d) is amended--

(1) by striking "December 31, 2010" both places it appears in subparagraph (B) and inserting "December 31, 2011", and

(2) by striking "January 1, 2010" in the heading and the text of subparagraph (D) and inserting "January 1, 2012".

<< 26 USCA § 1400N NOTE >>

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to property placed in service after December 31, 2009.

TITLE VIII--BUDGETARY PROVISIONS

SEC. 801. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay–As–You–Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

SEC. 802. EMERGENCY DESIGNATIONS.

(a) STATUTORY PAYGO.--This Act is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay–As–You–Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)) except to the extent that the budgetary effects of this Act are determined to be subject to the current policy adjustments under sections 4(c) and 7 of the Statutory Pay–As–You–Go Act.

(b) SENATE.--In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

***3325**

(c) HOUSE OF REPRESENTATIVES.--In the House of Representatives, every provision of this Act is expressly designated as an emergency for purposes of pay-as-you-go principles except to the extent that any such provision is subject to the current policy adjustments under section 4(c) of the Statutory Pay–As–You–Go Act of 2010.

Approved December 17, 2010.

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Appendix "B"

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle A. Income Taxes (Refs & Annos)
Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)
Subchapter O. Gain or Loss on Disposition of Property
Part II. Basis Rules of General Application (Refs & Annos)

26 U.S.C.A. § 1014

§ 1014. Basis of property acquired from a decedent

Effective: December 19, 2014
Currentness

(a) In general.--Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be--

(1) the fair market value of the property at the date of the decedent's death,

(2) in the case of an election under section 2032, its value at the applicable valuation date prescribed by such section,

(3) in the case of an election under section 2032A, its value determined under such section, or

(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

(b) Property acquired from the decedent.--For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

[**(7) Repealed.** Pub.L. 113-295, Div. A, Title II, § 221(a)(74)(B), Dec. 19, 2014, 128 Stat. 4049]

[**(8) Repealed.** Pub.L. 113-295, Div. A, Title II, § 221(a)(74)(B), Dec. 19, 2014, 128 Stat. 4049]

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to--

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c) Property representing income in respect of a decedent.--This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special rule with respect to DISC stock.--If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the

decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

(e) Appreciated property acquired by decedent by gift within 1 year of death.--

(1) In general.--In the case of a decedent dying after December 31, 1981, if--

(A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

(2) Definitions.--For purposes of paragraph (1)--

(A) Appreciated property.--The term "appreciated property" means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

(B) Treatment of certain property sold by estate.--In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(f) [Repealed. Pub.L. 111-312, Title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 296; Feb. 11, 1958, Pub. L. 85-320, § 2, 72 Stat. 5; Dec. 10, 1971, Pub.L. 92-178, Title V, § 502(f), 85 Stat. 550; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1901(c)(8), Title XX, § 2005(a)(1), 90 Stat. 1803, 1872; Nov. 6, 1978, Pub.L. 95-600, Title V, § 515(1), Title VII, § 702(c)(1)(A), 92 Stat. 2884, 2926; Apr. 1, 1980, Pub.L. 96-222, Title I, § 107(a)(2)(A), 94 Stat. 222; Apr. 2, 1980, Pub.L. 96-223, Title IV, § 401(a), 94 Stat. 299; Aug. 13, 1981, Pub.L. 97-34, Title IV, § 425(a), 95 Stat. 318; Jan. 12, 1983, Pub.L. 97-448, Title I, § 104(a)(1)(A), 96 Stat. 2379; Aug. 5, 1997, Pub.L. 105-34, Title V, § 508(b), 111 Stat. 860; June 7, 2001, Pub.L. 107-16, Title V, § 541, 115 Stat. 76; Oct. 22, 2004, Pub.L. 108-357, Title IV, § 413(c)(18), 118 Stat. 1508; Pub.L. 111-312, Title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300; Pub.L. 113-295, Div. A, Title II, § 221(a)(74), Dec. 19, 2014, 128 Stat. 4049.)

Notes of Decisions (97)

26 U.S.C.A. § 1014, 26 USCA § 1014
Current through P.L. 114-25 (excluding P.L. 114-18) approved 6-15-2015

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United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle A. Income Taxes (Refs & Annos)
Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)
Subchapter O. Gain or Loss on Disposition of Property
Part II. Basis Rules of General Application (Refs & Annos)

26 U.S.C.A. § 1022

[§ 1022. Repealed. Pub.L. 111-312, Title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

Effective: December 17, 2010
Currentness

26 U.S.C.A. § 1022, 26 USCA § 1022
Current through P.L. 114-25 (excluding P.L. 114-18) approved 6-15-2015

End of Document

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle B. Estate and Gift Taxes (Refs & Annos)
Chapter 11. Estate Tax (Refs & Annos)
Subchapter A. Estates of Citizens or Residents
Part I. Tax Imposed

26 U.S.C.A. § 2001

§ 2001. Imposition and rate of tax

Effective: January 2, 2013
Currentness

(a) Imposition.--A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax.--The tax imposed by this section shall be the amount equal to the excess (if any) of--

(1) a tentative tax computed under subsection (c) on the sum of--

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule.--

If the amount with respect to which the tentative tax to be computed is:	**The tentative tax is:**
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000.

Over $40,000 but not over $60,000	$8,200, plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.
Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000	$345,800, plus 40 percent of the excess of such amount over $1,000,000.

(d) Adjustment for gift tax paid by spouse.--For purposes of subsection (b)(2), if--

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035.--If--

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) Valuation of gifts.--

(1) In general.--If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on--

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination.--For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if--

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) Modifications to gift tax payable to reflect different tax rates.--For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute--

(1) the tax imposed by chapter 12 with respect to such gifts, and

(2) the credit allowed against such tax under section 2505, including in computing--

(A) the applicable credit amount under section 2505(a)(1), and

(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 373; Oct. 4, 1976, Pub.L. 94-455, Title XX, § 2001(a)(1), 90 Stat. 1846; Nov. 6, 1978, Pub.L. 95-600, Title VII, § 702(h)(1), 92 Stat. 2930; Aug. 13, 1981, Pub.L. 97-34, Title IV, § 402(a) to (c), 95 Stat. 300; July 18, 1984, Pub.L. 98-369, Div. A, Title I, § 21(a), 98 Stat. 506; Dec. 22, 1987, Pub.L. 100-203, Title X, § 10401(a), (b)(1), (2)(A), 101 Stat. 1330-430; Aug. 10, 1993, Pub.L. 103-66, Title XIII, § 13208(a), (b)(1), (2), 107 Stat. 469; Aug. 5, 1997, Pub.L. 105-34, Title V, §§ 501(a)(1)(D), 506(a), 111 Stat. 845, 855; July 22, 1998, Pub.L. 105-206, Title VI, § 6007(e)(2)(B), 112 Stat. 810; Oct. 21, 1998, Pub.L. 105-277, Div. J, Title IV, § 4003(c), 112 Stat. 2681-909; Pub.L. 107-16, Title V, § 511(a) to (c), June 7, 2001, 115 Stat. 70; Pub.L. 111-312, Title III, § 302(a)(2), (d)(1), Dec. 17, 2010, Stat. 3301, 3302; Pub.L. 112-240, Title I, § 101(c)(1), Jan. 2, 2013, 126 Stat. 2318.)

Notes of Decisions (1)

26 U.S.C.A. § 2001, 26 USCA § 2001
Current through P.L. 114-25 (excluding P.L. 114-18) approved 6-15-2015

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,	CASE NO. CVOC1500106
Petitioner,	**REPLY MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION FOR SUMMARY JUDGMENT**
-vs-	
IDAHO STATE TAX COMMISSION,	
Respondent.	

COMES NOW, Respondent Idaho State Tax Commission (Commission), by and through its counsel, pursuant to Rule 56(c), Idaho Rules of Civil Procedure, and submits its reply memorandum in support of its cross motion for summary judgment, and in opposition to the motion for summary judgment of Petitioner, the Estate of Zippora Stahl (Estate).

I. INTRODUCTION

In short, this case depends on this Court interpreting certain statutory language within the context of the entire Idaho Income Tax Act. The Estate would like to focus on only one section of the Act, to the exclusion of the rest. The Tax Commission urges this Court to read the Act as

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a whole. When read as a whole, it becomes clear that Idaho law does not allow the Estate to report one sum as its taxable income in its federal return and another sum in its Idaho return.

Summary judgment is proper in favor of the Commission.

II.
ARGUMENT

A. In ascertaining what the term "Internal Revenue Code" means in Idaho law, this Court should give effect to legislative intent by reading the Idaho Income Tax Act as a whole.

The correct meaning of the term "Internal Revenue Code" can be understood within the context of the whole Idaho Income Tax Act. As set forth more fully in its Memorandum in Support of Tax Commission's Motion for Summary Judgment filed herein, the Commission reiterates here simply that it is a court's duty to ascertain and give effect to legislative intent by reading the entire act, and that a statute should be considered as a whole. St. Luke's Magic Valley Regional Center v. Board of Cty Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010); Paolini v. Albertson's, Inc., 143 Idaho 547, 549, 149 P.3d 822, 824 (2006).

The Estate should compute its taxable income on its State return the same way it did on its federal return. The definition of "taxable income" under Idaho Code § 63-3011B is "federal taxable income as determined under the Internal Revenue Code." The term "Internal Revenue Code" is defined for Idaho income tax purposes for the taxable year as "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012" and includes "[p]rovisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section." Idaho Code § 63-3004 (2012) (emphasis added).

When reading Idaho Code § 63-3004 in connection with Idaho Code § 63-3002, it becomes clear that "off-code" provisions which amend Title 26, U.S.C., are to be included within the definition of "Internal Revenue Code." Idaho Code § 63-3002 tells us how to think of the term "Internal Revenue Code" used in Idaho Code § 63-3004. That is, the Idaho Legislature intended for Idaho taxpayers to report identical figures.

Idaho Legislature's clear intent was expressed in Idaho Code § 63-3002:

> DECLARATION OF INTENT. It is the intent of the legislature by the adoption of this act [the Idaho Income Tax Act], insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States

Idaho Code § 63-3002 (emphasis added). Thus, the Idaho tax base is to conform to federal law.

This provision caused the Idaho Supreme Court to state that "[o]ur legislature intended the provisions of the Idaho Income Tax Act to be identical to the Internal Revenue Code, in so far as possible. Idaho Code § 63-3002." Parsons v. Idaho State Tax Comm'n, Dep't of Revenue & Taxation, 110 Idaho 572, 575, 716 P.2d 1344, 1347 (Ct. App. 1986) (emphasis added). Thus, when reading the entire Act, it becomes clear that the correct way to interpret the meaning of the term "Internal Revenue Code" and its appurtenant "amendments" and "additions" and

"deletions" in Idaho Code § 63-3004 is within the context of having identical figures between the two reporting systems.

The Estate, instead, focuses on the definition of "Internal Revenue Code" in Idaho Code § 63-3004, and asks the Court to essentially disregard the language in the section requiring that identical income figures be reported, Idaho Code § 63-3002. The Estate asks the Court to read one section, but ignore another. The Estate's argument seems to ignore that a term can mean different things in statute as it does to the man on the street.[1]

This is seen by reading the entire Income Tax Act. And this approach of reading the entire act is consistent with sound rules for applying the meaning of statutes. To read "Internal Revenue Code" to mean only those provisions contained within Title 26, U.S.C., is inconsistent with the remainder of the Idaho Income Tax Act. This Court should give effect to the stated legislative intent by reading the entire act, and consider it as a whole. Paolini, at 549. The Estate has failed to show why it should disregard the plain meaning of the Idaho Income Tax Act and dismantle a system that is based on being a "mirror" of figures reported to the I.R.S.

B. The Estate has failed to account for the fact that the entire Idaho income tax scheme is to be a "mirror" and based on conforming to the federal system.

The Idaho Supreme Court has explained that Idaho's taxation system is supposed to mirror federal tax law:

> *Idaho's taxation scheme **mirrors** that of federal law.* 'It is the intent of the [Idaho] legislature ... insofar as possible to make the provisions of the [Idaho Income Tax Act] identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income....'

[1] It is not uncommon for terms to have specialized meanings due to statutory particulars. For example, to the person on the street, the term "foreign corporation" sounds like it means a corporation that comes from another country. But under Idaho law, a "foreign corporation" is broader than that: it means a corporation that originates anywhere outside of Idaho. Idaho Code § 30-29-140(12). Likewise, here, the term, "Internal Revenue Code" means more than the pages located within Title 26, U.S.C. Here, the term "Internal Revenue Code" has a broader meaning due to the meaning given it by the Idaho Code, and includes "off-code" provisions which amend Title 26.

Parker v. Idaho State Tax Comm'n, 148 Idaho 842, 846, 230 P.3d 734, 738 (2010) (emphasis added). Therefore, when computing Idaho taxable income, a taxpayer is to follow the way its federal taxable income was calculated. A taxpayer is not to use one set of calculations and figures for the federal system, and then use a different set when computing Idaho taxable income.

The plain language of this statute indicates that the Tax Commission is to administer and enforce a state tax system built on the principle that taxpayers are to use identical figures in their Idaho return as in their federal return. Idaho Code § 63-3002. Applying some other legal theory is tantamount to using equity to avoid the strictures of the law. Departing from the language of the statute in search of an equitable remedy is improper under Idaho law.

Above all else, "[i]t is well understood that equitable principles cannot supersede the positive enactments of the legislature." Davis v. Idaho Dept. of Health and Welfare, 130 Idaho 469, 471, 943 P.2d 59, 61 (Ct. App. 1997) (emphasis added). "Where a statute is plain, clear and unambiguous, the courts must follow that plain meaning and neither add to the statute nor take away by judicial construction. It is for the legislature, not the judiciary, to evaluate the wisdom or efficacy of the statutory scheme." Rule Sales and Service, Inc. v. U.S. Bank Nat. Ass'n, 133 Idaho 669, 672-673, 991 P.2d 857, 860-861 (Ct. App. 1999) (emphasis added) (internal citations omitted).

The Estate wishes to escape the principle that Idaho's tax system is to conform to the federal one, and is, in essence, asking this Court to craft an equitable remedy to allow them to report disparate figures. The positive enactments of statute cannot be superseded by notions of equity. Davis, 130 Idaho at 471, 943 P.2d at 61. Instead, this Court should follow the plain

reading of the entire Idaho Income Tax Act and the Idaho case law indicating how statutes should be read.

C. The Estate's reasoning would lead to harmful results and undermine Idaho's entire system of tax-base conformity.

If we were to follow the Estate's reasoning, not only would taxpayers report different sums of "taxable income" to Idaho as they do to the IRS—dramatically dismantling the current system—but it would invalidate other similar "off-code" amendments to the Internal Revenue Code.

For example, in The American Taxpayer Relief Act of 2012 (Public Law 112-240), Congress extended the provisions for tax-free distributions from Individual Retirement Plans for Charitable Purposes. Section 208(a) of that law changed the effective date in the Internal Revenue Code to December 31, 2013 (from December 31, 2011). Section 208(b) of that law provides that the election of the taxpayer of any qualified charitable distribution made after December 31, 2012 and before February 1, 2013 to be deemed to have been made on December 31, 2012. AMERICAN TAXPAYER RELIEF ACT OF 2012, PL 112-240, January 2, 2013, 126 Stat 2313. Under the Estate's reasoning, the distribution from the IRA would be taxable in Idaho instead of tax-free as it is treated for federal purposes.

Under this "off-code" amendment, here is a scenario that would be created if the Court follows the Estate's reasoning:

1. Ms. Taxpayer receives a distribution of $80,000 from an IRA account in 2012;
2. Ms. Taxpayer, in accordance with Public Law 112-40, timely donates the $80,000 to a charitable organization in 2013;
3. Federal law would allow the Ms. Taxpayer to exclude $80,000 as a deduction;
4. But Idaho would disallow the IRA distribution as tax free, and the $80,000 donation would be taxed

This type of disparate treatment is the antithesis of what the Idaho legislature declared was its intent. Idaho Code § 63-3002. This Court should not follow the Estate's reasoning here, as it would disrupt the "mirror image" system set in place by the Idaho Legislature.

Other examples of "off-code" provisions that directly affect the calculation of federal taxable income include 46 USC § 1161. This section allows a deduction from "taxable income" of amounts deposited in a capital construction fund for merchant marine vessels. The deduction is not contained within Title 26, U.S.C. In the Estate's reasoning, the taxpayer and the Tax Commission would disregard the income figures listed in a taxpayer's federal return, and the Tax Commission would disregard this deduction and charge the taxpayer additional tax.

Another example is found in the Public Law 111-126, the Haiti Assistance Income Tax Incentive Act. This Act allows cash contributions for relief of the Haiti earthquake disaster to treat certain contributions made in 2010 to be deducted as if they had been made in 2009. Under the Internal Revenue Code, those deductions would only be deductible in 2010. This non-code provision directly affected the calculation of federal taxable income for 2009. Even though these provisions are not contained within Title 26, U.S.C., they amend the Internal Revenue Code for purposes of calculating the tax in Section 1 of that Code. If the Court were to follow the Estate's construction of the Idaho Income Tax Act, this deduction would be disallowed and disregarded by the Idaho Tax Commission; a taxpayer would report disparate income figures to Idaho and would pay more tax. This is an absurd result.

Finally, the Estate's reasoning would disrupt Idaho's overall income tax scheme. One benefit of having Idaho's tax base conform to the federal system is that Idaho taxpayers do not have the burden of calculating their income twice (once *with* "off-code" provisions and again *without* "off-code" provisions). The Estate's position would remove that benefit. Moreover,

taxpayers would be required to keep two sets of records. The Estate's position would burden taxpayers by making the tax system more cumbersome and complex. Following the Estate's reasoning in this case would produce a precedent wholly inconsistent with the aims of the Idaho Income Tax Act. Instead, this Court should follow the clear and overt declaration in Idaho law that taxpayers use the figures reported to the IRS as the starting point.

III.
CONCLUSION

For all these reasons, this Court should grant the Tax Commission's motion for summary judgment.

DATED this 17 day of July 2015.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of July 2015, I caused to be served a true and correct copy of the within and foregoing Tax Commission's REPLY MEMORANDUM IN SUPPORT OF TAX COMMISSION'S MOTION FOR SUMMARY JUDGMENT upon Petitioner indicated below:

NICHOLAS S MARSHALL
MAXIMILIAN HELD
AHRENS DEANGELI LAW GROUP LLP
PO BOX 9500
BOISE ID 83707-9500

_____ U.S. Mail, Postage Prepaid
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DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Petitioner, -vs- IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CVOC1500106 **ORDER ON MOTION TO STRIKE**

The Tax Commission having filed its Motion to Strike (Affidavit of Ralph V. Seep), the Estate of Zippora Stahl having filed its Response in Objection to Motion to Strike,

This Court, having examined and considered the papers filed herein, having heard this matter, and being fully advised in the premises,

NOW THEREFORE, this Court does GRANT the Commission's Motion in part, and does DENY the Commission's Motion in part, as follows:

1. The Court denies the Commission's motion in part in that the Court will admit paragraphs 1 and 2 of the Affidavit of Ralph V. Seep into the record. The Court will also admit into the record the second sentence of paragraph 3 which states: "'Section 301(c)' enacted freestanding provisions that this office classified as a statutory note under section 2001 of Title 26 of the United States Code."

2. The Court grants the Commission's motion in part in that the Court will strike from the record all of paragraph 3 of the Affidavit of Ralph V. Seep, with the exception of the one sentence identified above.

DATED this 21st day of July 2015.

HONORABLE JASON D. SCOTT
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July 2015, I caused to be served a true and correct copy of the foregoing ORDER ON MOTION TO STRIKE by depositing the same in the United States Mail, postage prepaid, and addressed to:

NICHOLAS S MARSHALL MAXIMILIAN HELD AHRENS DEANGELI LAW GROUP LLP PO BOX 9500 BOISE ID 83707-9500	X U.S. Mail, ~~Postage Prepaid~~ _____ Hand Delivered _____ Overnight Mail _____ Telecopy: (208) 639-7788 _____ Email
DAVID B. YOUNG DEPUTY ATTORNEY GENERAL PO BOX 36 BOISE, IDAHO 83722-0410	X U.S. Mail, ~~Postage Prepaid~~ _____ Hand Delivered _____ Overnight Mail _____ Telecopy: (208) 954-7844 _____ Email

DEPUTY CLERK

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,

Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,

Defendant.

Case No. CV-OC-2015-00106

MEMORANDUM DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This is an income-tax case. The parties' dispute concerns the taxpayer's "basis" in real property the taxpayer sold during 2012. A taxpayer's basis in property, in practical terms, is the amount of money that must be subtracted, in determining the taxpayer's taxable gain or loss on a sale of property, from the amount of money the taxpayer realized by selling the property.

The taxpayer here is Plaintiff Estate of Zippora Stahl. The Estate claims its basis, for Idaho income tax purposes, is the property's fair market value as of Stahl's death in 2010. Defendant Idaho State Tax Commission claims, by contrast, that Stahl's basis in the property—essentially, the cost of the property to her—carries over to the Estate.

The parties have filed cross-motions for summary judgment concerning which basis in the property is the correct one under Idaho's income-tax statutes. The motions were argued and taken under advisement on July 23, 2015. For the reasons that follow, the Court now grants summary judgment to the Tax Commission and denies it to the Estate.

I.

BACKGROUND

The parties dispute the legal consequences arising from the facts. The facts themselves, by contrast, are undisputed. The undisputed facts are set forth in the Joint Stipulation of Facts the parties filed on June 26, 2015.

Summarizing the stipulated facts, the Court first notes that Zippora Stahl resided in Idaho at the time of her death in 2010. (Joint Stipulation of Facts ¶ 1.) When she died, she owned real property in Chino, California. (Id. ¶ 2.) The Chino property became part of the Estate. Its worth at the time of Stahl's death substantially exceeded her investment in it. (Id.)

A probate court in California approved the Estate's sale of the Chino property. (Id. ¶ 3.) The Estate, acting through personal representative Kathleen Krucker, then proceeded to sell the Chino property in December 2012. (Id. ¶¶ 1, 4.)

On its 2012 federal income tax return, the Estate reported a taxable gain on the sale of the Chino property. (Id. ¶ 5.) The reported gain amount was $14,881,659. (Id.) It was figured by starting with the $16,339,000 sale price and subtracting from the sale price the Estate's $1,457,341 basis in the property. (Id.)

As already noted, the taxpayer's "basis" in property is the amount of money that must be subtracted, in determining the taxpayer's taxable gain or loss on a sale of property, from the amount of money the taxpayer realized by selling the property. Under the Internal Revenue Code, a different method of determining basis may be appropriate in one circumstance than in another. The Estate used a "modified carryover basis," in keeping with an election Krucker previously had made for the Estate under section 301(c) of the federal Tax Relief, Unemployment Insurance

Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"), Public Law 111-312. (Id.) The Internal Revenue Service refers to the election for which TRUIRJCA § 301(c) provides as the "Section 1022 Election." I.R.S. Pub. No. 4895, *Tax Treatment of Property Acquired from a Decedent Dying in 2010*, at 2 (rev. Oct. 14, 2011); I.R.S. Notice 2011-66, I.R.B. 2011-35. The Court will use that terminology as well. It is apt for reasons demonstrated below.

Some background information on federal income and estate tax law is necessary to understand the import of the Estate's Section 1022 Election.

The United States has long imposed an estate tax—a tax "on the transfer of the taxable estate" of decedents who are United States citizens or residents. I.R.C. § 2001(a). The taxable estate is determined, in part, by the value of the decedent's property at the time of her death. I.R.C. §§ 2051, 2031(a). Because the estate tax is imposed on the property's value at the time of death, those to whom the property is transferred as a result of the decedent's death, generally speaking, receive for federal income tax purposes a basis in the property equal to its value at the time of death. I.R.C. § 1014(a)(1). The transferee's basis is commonly called a "stepped-up basis" because the transferee's basis, if the property appreciated in value during the period the decedent owned it, is increased (stepped up) from the decedent's own basis in the property before her death, which, essentially, is the cost of the property to her. I.R.C. § 1012(a). So, when the transferee later sells the property, the transferee's taxable gain or loss on the sale will, leaving aside potential complexities not relevant here, be the difference between the sale price and the stepped-up basis. I.R.C. §§ 1001, 1011. This taxation scheme ensures that the appreciation in the property's value during the period it was owned by the decedent is not subject to both estate tax when the decedent dies and income tax when the transferee eventually sells the property.

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2011 ("EGTRRA"), Public Law 107-16. EGTRRA gradually phased out the estate tax. The phase-out became complete at the end of 2009, so that no tax was to be imposed on the estates of individuals who died during 2010 or any later year. EGTRRA § 501. Having provided for the elimination of the estate tax, Congress evidently concluded it no longer was just for transferees of decedents' property to have a stepped-up basis in the property. Thus, in EGTRRA, Congress terminated Section 1014 of the Internal Revenue Code, which provides for the stepped-up basis, with respect to estates of individuals who died after 2009. EGTRRA § 541.

Also as part of EGTRRA, Congress enacted new Section 1022 of the Internal Revenue Code, providing that a transferee of a decedent's property, if the decedent died after 2009, will have a basis in the property equal to "the lesser of—(A) the adjusted basis of the decedent, or (B) the fair market value of the property at the date of the decedent's death." EGTRRA § 542(a); I.R.C. § 1022(a)(2). The Internal Revenue Service calls this basis the "modified carryover basis." I.R.S. Pub. No. 4895, *Tax Treatment of Property Acquired from a Decedent Dying in 2010*, at 2 (rev. Oct. 14, 2011). The term "carryover" is an evident reference to the transferee's basis being carried over from the decedent. In any event, because the transferee's gain or loss on an eventual sale of the property is figuring using a modified carryover basis, the property's appreciation in value during the period the decedent owned it, though no longer subject to estate tax, would be subject to income tax under new Section 1022.

In 2010, the year in which the estate tax's phase-out under EGTRRA became complete, Congress changed course. That year, Congress enacted TRUIRJCA. TRUIRJCA repealed the portions of EGTRRA that provided for the estate tax's repeal and for the transferees of decedents'

property no longer to have a stepped-up basis in the property. TRUIRJCA § 301(a). It did so with respect to the estates of individuals who died after 2009. TRUIRJCA § 301(e). One aspect of TRUIRJCA, then, was to effectuate, for the most part, the repeal of Section 1022 with respect to the estates of individuals who died after 2009.

That said, Congress evidently regarded the estates of individuals who died during 2010 as a special case. For their benefit, it authorized the Section 1022 Election in TRUIRJCA § 301(c), the pertinent portion of which is as follows:

> (c) SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.—Notwithstanding [TRUIRJCA § 301(a), which reinstates the estate tax and, for the most part, repeals Section 1022], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by [TRUIRJCA § 301(a)] do not apply with respect to chapter 11 of such Code [which provides for the estate tax] and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code).

TRUIRJCA § 301(c) (emphasis added). TRUIRJCA § 301(c) was classified by the Office of Law Revision Counsel of the United States House of Representations as a statutory note under I.R.C. § 2001 (Seep Aff. ¶ 3[1]), as opposed to being codified as part of a section of the Internal Revenue Code (Title 26 of the United States Code). The parties agree, however, that TRUIRJCA § 301(c) has full status as valid and enforceable federal law, despite being uncodified.

[1] The balance of the Seep affidavit's paragraph 3 was stricken in an oral ruling on July 15, 2015. The basis for that ruling was stated on the record. In essence, the Court ruled that the stricken testimony lacked foundation because Seep, after giving his job title and describing the function of the federal office for which he works, proceeded to offer what amounts to opinion testimony or legal conclusions, without explaining the reasons behind them. Regardless, the stricken testimony, had it been considered, would not change the outcome on summary judgment.

Explained in plain language, the Section 1022 Election allowed the estates of individuals who died during 2010 to elect not to pay estate tax, despite TRUIRJCA's general reinstatement of the estate tax. Under TRUIRJCA § 301(c), if an estate avoids the estate tax by making the Section 1022 Election, its basis in the property it acquired from the decedent will be the modified carryover basis for which "repealed" Section 1022[2] provides, not the stepped-up basis for which Section 1014 provides. Thus, the property's appreciation during the period it was owned by the decedent will not escape federal income taxation if the Section 1022 Election is made, even though it will escape estate taxation.

As already noted, the Estate made the Section 1022 Election. As a result, it was not obligated to pay estate tax. It was, however, obligated to use the modified carryover basis for federal income tax purposes with respect to its 2012 sale of the Chino property. And, as already noted, that is exactly what it did, resulting in a reported $14,881,659 taxable gain on that sale.

On the Estate's initial 2012 Idaho income tax return, the Estate figured its taxable gain on the sale of the Chino property the same way it had done on its 2012 federal income tax return. (Joint Stipulation of Facts ¶ 6.) In other words, the Estate initially used the modified carryover basis in figuring its Idaho taxable income for the year 2012.

In processing the Estate's Idaho income tax return, the Tax Commission determined the Estate had incorrectly calculated a tax credit. (Id. ¶ 7.) It therefore issued a notice informing the Estate that an additional $20,629 in Idaho income tax was owed for the year 2012. (Id.)

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[2] The term "repealed" is used loosely here. As discussed later in this decision, though Section 1022 was, as a general matter, repealed by TRUIRJCA § 301(a), TRUIRJCA § 301(e) makes clear that the repeal of Section 1022 does not apply to estates that, like the Estate, make the Section 1022 Election.

The Estate protested the notice. (Id. ¶ 8.) In doing so, the Estate amended its 2012 Idaho income tax return. (Id.) On the amended return, the Estate changed its basis in the Chino property. (Id.) Instead of using a modified carryover basis, as it previously had done for both federal and Idaho income tax purposes, the Estate switched to a stepped-up basis for Idaho income tax purposes only. (Id.) This methodological change reduced the Estate's reported Idaho taxable gain on the sale of the Chino property from $14,881,659 to $318,909. (Id.) Having made that change, the Estate asserted it is owed a refund of $1,026,435. (Id.) The Estate did not amend its federal return. Its position, in so amending its Idaho return, is that federal law provides for a modified carryover basis, whereas Idaho law provides for a stepped-up basis, in this instance.

The Tax Commission rejected the Estate's refund claim and upheld its own prior determination that the Estate owed an additional $20,629 in Idaho income tax. (Id. ¶ 9.)

Contending the Tax Commission wrongly rejected its refund claim, the Estate filed this action, seeking the refund the Tax Commission refused to provide. Trial is scheduled to begin December 7, 2015. As already noted, however, the parties have filed cross-motions for summary judgment. Those motions have been argued and are now ready for decision.

II.

LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Accordingly, the movant must prove the absence of a genuine issue of material fact. *E.g., Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 103-04, 294 P.3d 1111, 1115-16 (2013). If the

movant so proves, the burden shifts to the nonmovant to prove the opposite: the existence of a genuine issue of material fact. *Id.* at 104, 294 P.3d at 1116.

To meet that ultimate burden, the nonmovant "may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Id.* (quotation marks omitted). The record must be construed in the light most favorable to the nonmovant, with all reasonable inferences drawn in the nonmovant's favor. *Id.* Nevertheless, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient" to avoid summary judgment. *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013). The nonmovant's failure to prove the existence of a genuine issue of material fact "will result in an order granting summary judgment." *Sprinkler Irrigation Co. v. John Deere Ins. Co.*, 139 Idaho 691, 698, 85 P.3d 667, 675 (2004).

As already noted, the parties do not dispute the facts. Consequently, the party whose legal position is correct, in light of the agreed facts, is entitled to summary judgment.

III.

ANALYSIS

In reporting its taxable gain for federal income tax purposes on the 2012 sale of the Chino property, the Estate used a modified carryover basis. The parties agree that federal law required it to do so. The Estate initially used the same modified carryover basis in reporting its taxable gain for Idaho income tax purposes, but then the Estate amended its Idaho income tax return to switch to a stepped-up basis. The parties disagree about whether Idaho law permitted the Estate to do so. They agree that the Internal Revenue Code (Title 26 of the United States Code) is incorporated into Idaho's income tax statutes and that, as a result, the same basis usually must be used for both

federal and Idaho income tax purposes. They disagree, however, about whether Idaho's income tax statutes also incorporate so-called "off-code" provisions, meaning provisions of federal law that have federal income tax implications but are not codified in the Internal Revenue Code. That is the fundamental disagreement between them. It is a legal one, not a factual one. Regardless, the Court perceives it as essentially irrelevant to the correct resolution of this case. Section 1022 of the Internal Revenue Code—not some "off-code" provision—required the Estate to use the modified carryover basis. Despite Section 1022's "repeal" in 2010, it was very much alive and in effect in 2012 with respect to the Estate because the Estate had made the Section 1022 Election. Since an Internal Revenue Code provision—Section 1022—dictates that the Estate use a modified carryover basis, rather than an "off-code" provision, Idaho's income tax statutes plainly require the same basis. These conclusions are further explained below.

The parties agree that Idaho levies a tax on "Idaho taxable income." "Idaho taxable income" is defined in the Idaho Income Tax Act, I.C. §§ 63-3001 *et seq.*, as "federal taxable income as determined under the Internal Revenue Code," I.C. § 63-3011B, "as modified pursuant to the Idaho adjustments specifically provided in [Idaho's income tax statutes]." I.C. § 63-3011C (emphasis added). The meaning of this language is quite clear: Idaho taxable income is equal to federal taxable income, except to the extent Idaho's income tax statutes specifically provide for adjustments to federal taxable income. This clear meaning is supported by the Idaho legislature's own statutory declaration of intent:

> It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the

> application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, . . . basis and other pertinent provisions . . . , resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived . . . . All of the foregoing is subject to modifications in Idaho law . . . .

I.C. § 63-3002 (emphasis added).

The nub of the parties' dispute is what, exactly, the term "Internal Revenue Code," as used in the Idaho Income Tax Act, means. For purposes of the 2012 tax year, the Idaho Income Tax Act defined that term as follows: "The term 'Internal Revenue Code' means the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012." I.C. § 63-3004 (emphasis added). The Estate's position is that this definition excludes "off-code" provisions, *i.e.*, provisions of federal law not codified in the Internal Revenue Code on January 1, 2012. The Estate maintains that, consequently, any "off-code" provision—even one that must be taken into account in determining federal taxable income—must be disregarded in determining Idaho taxable income. The Estate correctly points out that TRUIRJCA § 301(c), which authorized it to make the Section 1022 Election, is an "off-code" provision. So, the Estate contends its Section 1022 Election must be disregarded in determining Idaho taxable income. On that thinking, the Estate says it was entitled to use a stepped-up basis under Section 1014 of the Internal Revenue Code in determining its Idaho taxable income, even though federal law required it to use a modified carryover method under "repealed" Section 1022 of the Internal Revenue Code in determining its federal taxable income.

That the Estate made the Section 1022 Election under an "off-code" provision does not mean, however, that the "off-code" provision itself is the mechanism for determining the Estate's

federal taxable income. To the contrary, the "off-code" provision at issue here directs electing taxpayers, like the Estate, to the Internal Revenue Code provision—Section 1022—that must be applied in determining basis and, by extension, federal taxable income. Thus, the Estate has no way around the conclusion that Section 1022 was "in effect on the first day of January 2012," as that phrase is used in I.C. § 63-3004, with respect to the Estate. That Section 1022 was "in effect" with respect to the Estate at that time is clear as a matter of federal law, as next shown.

As already explained in this decision's "Background" section, Section 1022 was enacted in 2001 as part of EGTRRA. EGTRRA § 542(a). It was then "repealed" in 2010 as part of TRUIRJCA. TRUIRJCA § 301(a).[3] But the "repeal" was not total. That is because of TRUIRJCA § 301(e), which states that "[e]xcept as otherwise provided in [TRUIRJCA § 301], the amendments made by [TRUIRJCA § 301] shall apply to estates of decedents dying, and transfers made, after December 31, 2009." TRUIRJCA § 301(e) (emphasis added). The underscored language plainly suggests there is an exception somewhere within TRUIRJCA § 301 that renders TRUIRJCA § 301's amendments—one of which is the repeal of Section 1022—inapplicable to some estates of decedents whose death occurred after 2009.

The exception is found in TRUIRJCA § 301(c), which authorizes the Section 1022 Election. As already discussed, by making the Section 1022 Election, an estate avoids estate tax and, in exchange for that benefit, must use Section 1022, instead of the more favorable Section 1014, to figure its basis in property acquired from the decedent. TRUIRJCA itself characterizes

[3] The repealing language is that "[e]ach provision of law amended by subtitle A or E of [EGTRRA] is amended to read as such provision would read if such subtitle had never been enacted." TRUIRJCA § 301(a). Section 1022 was part of EGTRRA's subtitle E.

the Section 1022 Election as an "elect[ion] to apply [the Internal Revenue] Code as though the amendments made by [TRUIRJCA § 301(a)] [*e.g.*, the repeal of Section 1022] do not apply . . . with respect to property acquired or passing from [the] decedent." TRUIRJCA § 301(c) (emphasis added). Thus, by making the Section 1022 Election, the Estate elected one application of the Internal Revenue Code over another; it did not elect an "off-code" means of determining its federal taxable income. The Estate determined its federal taxable income under the Internal Revenue Code, including Section 1022.

Because federal law quite plainly provides that the "repeal" of Section 1022 does not apply to the Estate (or to other estates that made the Section 1022 Election), there is no sensible way of regarding Section 1022 as other than "in effect" with respect to the Estate. Indeed, "repeal" means "[a]brogation of existing law by express legislative act." *Black's Law Dictionary* 1490 (10th ed. 2014). But Section 1022 was not completely abrogated; it was abrogated except with respect to property acquired from decedents whose estates made the Section 1022 Election, as the Estate did. To the limited extent it was not abrogated, Section 1022 remains in force as a matter of TRUIRJCA's plain language. *See also* 1 U.S.C. § 109 ("The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.") (emphasis added). Thus, the term "Internal Revenue Code," as defined in I.C. § 63-3004, includes Section 1022 insofar as the Estate (among other estates that made the Section 1022 Election) is concerned.

I.C. § 63-3004 is not ambiguous in that regard, as there is too little room for doubt about what it means. *See Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 182, 59 P.3d 983, 987 (2002) ("A statute is ambiguous when the meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning.") (internal quotation marks omitted). Consequently, there is no occasion to apply canons of statutory construction, including the canon that ambiguities in tax statutes are to be resolved in the taxpayer's favor. *E.g., id.* And the meaning of I.C. § 63-3004 is all the clearer in light of I.C. §§ 63-3002 and 63-3011C, both of which plainly say that Idaho taxable income is equal to federal taxable income unless Idaho law provides for a modification or adjustment to federal taxable income. The Estate's apparent view that I.C. § 63-3004 provides for such a modification or adjustment, in that it supposedly does not incorporate "repealed" (yet applicable to the Estate) Section 1022, is not a tenable one. Idaho law simply does not provide for the basis adjustment the Estate made.[4]

It is unnecessary to wade into the equities of the parties' respective positions to so decide. Each side has a reasonable argument for why its preferred outcome can be viewed as fair. Even assuming *arguendo* that the Estate has the more compelling argument of those two arguments, the Court's charge is to ascertain and apply the law, not to determine whether the better rule of law

[4] Some additional support for that conclusion can be found in the nature of the Estate's amended Idaho income tax return. Its initial Idaho income tax return (Joint Stipulation of Facts Ex. A) included a copy of the Estate's federal income tax return, as submitted to the Internal Revenue Service. By contrast, the amended Idaho return (id. Ex. B.) included a "SAMPLE" version of the federal return—"SAMPLE" meaning not the same as the Estate's actual federal return—that uses a stepped-up basis in determining the Estate's taxable gain on the sale of the Chino property. The Estate evidently took that approach because Idaho's income tax forms, which are designed to account for the adjustments to federal taxable income for which Idaho law provides, do not provide any way of accounting for the change in basis the Estate says Idaho law requires.

would allow the Estate (and similarly situated taxpayers) to use a stepped-up basis rather than a modified carryover basis. The law requires the Estate to use a modified carryover basis for Idaho income tax purposes. For that reason, the Tax Commission is entitled to summary judgment.

The Court understands from paragraph 2 on page 4 of the parties' Joint Stipulation of Facts that its ruling in favor of the Tax Commission resolves this case in its entirety, facilitating the entry of a final judgment in the Tax Commission's favor. Judgment will be entered in a separate document, as I.R.C.P. 54(a) and I.R.C.P. 58(a) require.

Accordingly,

IT IS ORDERED that summary judgment is granted to the Tax Commission, and denied to the Estate, on the Estate's claims. The Tax Commission's counsel shall promptly submit an appropriate form of judgment for the Court's consideration, after allowing the Estate's counsel a reasonable opportunity to review and comment.

Dated this 31st day of July, 2015.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on 31st of July, 2015, I mailed (served) a true and correct copy of the within instrument to:

Nicholas S. Marshall
Maximilian Held
Ahrens DeAngeli Law Group LLP
PO Box 9500
Boise, ID 83707-9500

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Electronic Mail
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David B. Young
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( ) Facsimile

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

RECEIVED
AUG 14 2015
Ada County Clerk

NO. ____ FILED A.M. ____ P.M. 4:26

AUG 21 2015

... RICH, Clerk
... STOKES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,	)	CASE NO. CVOC1500106
Petitioner,	)	**JUDGMENT**
-vs-	)	
IDAHO STATE TAX COMMISSION,	)	
Respondent.	)	

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Respondent Idaho State Tax Commission's (Tax Commission) Decision in this matter dated October 7, 2014, is hereby approved and affirmed;

IT IS FURTHER ORDERED THAT Petitioner Estate of Zippora Stahl (Estate) owes income taxes, penalty, and interest for taxable year 2012 in the sum of Twenty-one Thousand Seven Hundred and Thirty-Two Dollars ($21,732.00), which sum is credited by the payment of $21,732.00 for the security the Estate deposited with the Tax Commission pursuant to Idaho Code § 63-3049. Such payment shall represent complete payment and satisfaction of the taxes, penalty, and interest owed by the Estate for taxable year 2012; and
(initialed)

IT IS ALSO ORDERED THAT the Estate's claim for a refund against the Tax Commission for taxable year 2012 in the amount of $1,026,435.00 plus applicable interest is denied~~; and~~.
(initialed)

DATED this 21st day of August 2015.

HONORABLE JASON D. SCOTT
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of August 2015, I caused to be served a true and correct copy of the foregoing JUDGMENT by depositing the same in the United States Mail, postage prepaid, and addressed to:

NICHOLAS S MARSHALL MAXIMILIAN HELD AHRENS DEANGELI LAW GROUP LLP PO BOX 9500 BOISE ID 83707-9500	_____ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Overnight Mail _____ Telecopy: (208) 639-7788 __✓__ Email
DAVID B. YOUNG PHIL N SKINNER DEPUTY ATTORNEY GENERAL PO BOX 36 BOISE, IDAHO 83722-0410	_____ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Overnight Mail _____ Telecopy: (208) 334-7844 __✓__ Email

DEPUTY CLERK

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-2015-00106 PLAINTIFF'S MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT

COMES NOW, Plaintiff, the Estate of Zippora Stahl, Deceased, by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, and moves this Court pursuant to Rules 59(e) and 11(a)(2) of the Idaho Rules of Civil Procedure, for reconsideration and amendment of its Judgment in favor of Defendant, the Idaho State Tax Commission, entered in the above-captioned matter on August 21, 2015. This Motion is supported by the accompanying Memorandum and the pleadings and files of record herein.

DATED this 3rd day of September, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-2015-00106 PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT

I. INTRODUCTION

Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, hereby moves this Court, pursuant to Rules 59(e) and 11(a)(2) of the Idaho Rules of Civil Procedure, for reconsideration and amendment of its Judgment (the "Judgment") in favor of Defendant, the Idaho State Tax Commission (the "Commission"), entered in the above-captioned

matter on August 28, 2015. Because the Judgment is based upon errors of law, as articulated in this Court's Memorandum Decision and Order on Cross-Motions for Summary Judgment dated July 31, 2015 (the "Memorandum Decision"), reconsideration and amendment of the Judgment in the Estate's favor is necessary, as explained below.

II. FACTS AND PROCEDURAL HISTORY

Zippora Stahl, a resident of Idaho, died in 2010. Her estate included real property (the "Chino property") with an estimated date-of-death fair market value of $16,000,000. Ms. Stahl had an adjusted basis in the Chino property of approximately $1,457,341 prior to her death. When the Chino property sold in 2012 for $16,318,909, disputes arose between the Estate and the Commission regarding the appropriate income tax basis for the purposes of determining the Estate's Idaho taxable income under the Idaho Income Tax Act, I.C. § 63-3001 *et seq.* (the "Idaho Act").[1] The Commission insisted that the Estate must apply the $1,457,341 carryover basis reported on its 2012 Federal Income Tax return pursuant to the uncodified § 301(c) ("Public Law Election") of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 ("TRUIRJCA") in lieu of the $16,000,000 stepped-up basis required pursuant to § 1014[2] of the Internal Revenue Code of 1986 as incorporated by reference into the Idaho Act under I.C. § 63-3004.

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[1] Except as otherwise specified, all references to the "Idaho Act" are to I.C. § 63-3001, *et seq.* as amended and in effect as of January 1, 2012.

[2] In almost all cases, unless otherwise indicated, references to sections ("§") refer to sections of the Internal Revenue Code of 1986.

The Estate's dispute with the Commission culminated in the above-captioned lawsuit and cross motions for summary judgment. The Court heard oral argument on July 23, 2015 and issued its Memorandum Decision on July 31, 2015. In the Memorandum Decision, the Court dismissed as "essentially irrelevant" the parties' respective arguments as to whether "off-code" provisions of federal tax law uncodified within the text of the Internal Revenue Code of 1986, 26 U.S.C. § 1 *et seq.* are incorporated into the Idaho Act. Instead, the Court *sua sponte* focused on the significance of the phrase, "in effect" as used in I.C. § 63-3004 even though that precise issue had not been addressed in either party's briefs. Nevertheless, the Court held that the Estate must determine its income tax basis in the Chino property pursuant to former § 1022 which had been repealed from the Internal Revenue Code of 1986 on December 17, 2012 "as if [§ 1022] had never been enacted."[3] In support of its holding, the Court interpreted § 1022 as purportedly being "in effect on the first day of January 2012" as part of the Internal Revenue Code with respect to the Estate for purposes of I.C. § 63-3004. That holding and the Memorandum Decision contain errors of law including each of the following:

A. The Court's conclusion that Congress' repeal of § 1022 of the Internal Revenue Code of 1986 "was not total";

B. The Court's conclusion that I.C. § 63-3004 incorporates repealed § 1022 of the Internal Revenue Code of 1986 into the Idaho Act; and

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[3] *See* § 301(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296.

C. The Court's conclusion that the language of I.C. § 63-3004 purportedly incorporating repealed § 1022 into the Idaho Act is unambiguous.

In addition to those legal errors, the Court's holding (A) contradicts rules of statutory construction by rendering portions of I.C. § 63-3004 superfluous and inconsistent, and (B) does not address the Estate's argument that the Idaho Legislature could not have utilized I.C. § 63-3004 to incorporate repealed § 1022 into the Idaho Act without violating Article III, § 18 of the Idaho Constitution. All of these issues are discussed below.

III. DISCUSSION

A. Congress' Repeal of § 1022 from the Internal Revenue Code was Total and Complete with Respect to the Estates of All Decedents Dying after December 31, 2009.

1. Section 1022's Repeal was Total.

The plain and unambiguous language of TRUIRJCA § 301(a) unconditionally removed § 1022 from the Internal Revenue Code of 1986. Section 1022 had previously been added to the Internal Revenue Code in 2001 by Subtitle E of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, 115 Stat. 38 (the "2001 Act"). TRUIRJCA § 301(a) clearly and unambiguously provides that "[e]ach provision of law amended by [Subtitle E of the 2001 Act] is amended to read as such provision would read *if [Subtitle E] had never been enacted*." (Emphasis added). Therefore, TRUIRJCA § 301(a) completely and unambiguously eliminated § 1022 from the Internal Revenue Code *ab initio* for all decedents dying after December 31, 2009. Accordingly, § 1022 was not a section of the Internal Revenue Code on January 1, 2012.

2. Title 26 of the United States Code Indicates that § 1022's Repeal was Total.

A review of Title 26 as published in the United States Code Annotated ("U.S.C.A") (West) conclusively confirms that TRUIRJCA § 301(a) repealed § 1022 from the Internal Revenue Code in its entirety. The U.S.C.A. compilation of Title 26 indicates that TRUIRJCA § 301(a) repealed § 1022 effective December 17, 2010. The notation in the U.S.C.A. volume states "§ 1022. Repealed. Pub.L. 111-312, Title III, § 301(a), Dec. 17, 2010, 124 State. 3300 Effective: December 17, 2010." Furthermore, the text of Title 26 as set forth in the U.S.C.A. does not suggest that § 1022 was repealed for some taxpayers but not others. Therefore, as of January 1, 2010, § 1022 did not exist in Title 26 as a section of the Internal Revenue Code with respect to any taxpayer.

The sections of Title 26 of the United States Code are identical to the sections of the Internal Revenue Code. *See* 1 U.S.C. § 204(a) (statutory note). Furthermore, the statutes set forth in Title 26 "establish prima facie the laws of the United States." 1 U.S.C. § 204(a). Importantly, that presumption is applicable not only to this Court but to the courts of every state. 1 U.S.C. § 204(a). Accordingly, this Court erred when it ignored this presumption and the undisputed fact that TRUIRJCA § 301(a) repealed § 1022 in its entirety from Title 26 of the Internal Revenue Code effective as of December 17, 2010.

3. Congress' Method of Repeal Indicates its Intention that § 1022 be Totally and Completely Repealed from the Internal Revenue Code of 1986 and that the Basis Calculation Principles of § 1022 be Applied via Off-Code Mechanisms.

If Congress intended for provisions repealed by TRUIRJCA § 301(a) to continue to apply as provisions of the Internal Revenue Code to estates making the Public law Election, Congress would have enacted a section entirely different than TRUIRJCA § 301(c). Congress' "stated means" for incorporating a provision into the Internal Revenue Code is to name a section or part of the Internal Revenue Code "and then state that it '***is amended by inserting*** after section [specified Code section] the following new section' or '***is amended by adding*** at the end the following new section,' ***followed by the new Internal Revenue Code section number and text***." *See United States v. Tourtellot*, 483 B.R. 72, 84-85 (Bankr. M.D. N.C. 2012) (emphasis added). Accordingly, if Congress had intended to make the basis concepts of § 1022 applicable to taxpayers as a provision of the Internal Revenue Code, it would not have repealed § 1022 from the Internal Revenue Code, but rather would have amended its text to provide for application of § 1022's basis provisions only to estates making the Public Law Election. Likewise, Congress would also have amended the texts of §§ 1014 (stepped-up basis) and 2001 (imposition of estate tax) to indicate that those sections apply to all taxpayers other than those estates making the Public Law Election. Such amendments to the texts of those sections would then appear in the codified text of Title 26.

Congress did not take that approach. Rather, as it often does with transitory provisions that apply to a limited number of taxpayers, *see* Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649, 658-59 (2006), Congress utilized off-code provisions

that do not appear in the text of Title 26 to (1) apply the basis calculation formula of repealed § 1022 to the assets of estates making the Public Law Election and (2) make §§ 1014 and 2001 inapplicable to estates making that election.

Furthermore, the text of the Public Law Election acknowledges TRUIRJCA § 301(a)'s complete repeal of § 1022 and explains that "[n]otwithstanding [TRUIRJCA § 301(a)]," estates of decedents dying in 2010 "may elect ***to apply***" the Internal Revenue Code "***as though*** the amendments made by [TRUIRJCA § 301(a)] do not apply." (Emphasis added). Use of the phrase "as though" indicates the intent of Congress to allow certain taxpayers to indulge in a legal ficition and thereby "apply" the basis formula of a completely repealed statute (i.e., repealed § 1022) as if that statute had not been repealed. Likewise, use of the phrase "as though" indicates Congress' intent to not include the basis formula of repealed § 1022 as part of Title 26. Accordingly, the text of TRUIRJCA § 301(c) confirms that Congress selected to apply the basis rules of repealed § 1022 and the estate tax repeal provisions of the 2001 Act[4] as "off-code" provisions rather than as part of the Internal Revenue Code (Title 26).

4. TRUIRJCA § 301(e) does not Support the Conclusion that § 1022's Repeal was Less than Total.

In support of its conclusion that § 1022 was not repealed from the Internal Revenue Code with respect to the Estate, the Court erroneously presumes that Congress' repeal of § 1022 by TRUIRJCA § 301(a) "was not total" because TRUIRJCA § 301(e)'s use of the phrase "except as otherwise provided" supposedly indicates that some of TRUIRJCA § 301's amendments do not

[4] Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107 16, 115 Stat. 38

apply to the Internal Revenue Code for certain taxpayers. More specifically, the Memorandum Decision indicates that § 1022 was repealed from the Internal Revenue Code for all taxpayers other than those making the Public Law Election. Oddly, the Memorandum Decision presumes two different versions of Title 26 which would allow the Estate to "elect one application of the Internal Revenue Code over another." (Memorandum Decision, pp. 11-12.)

A plain reading of TRUIRJCA § 301(e), however, in no way suggests that any amendment or repeal made *to any section of the Internal Revenue Code* by TRUIRJCA § 301 was not total and does not suggest that TRUIRJCA creates two alternate versions of the Internal Revenue Code. TRUIRJCA § 301(e) simply states as follows:

> (e) **EFFECTIVE DATE**. - - Except as provided in this section [301], the amendments made by this section [301] shall apply to estates of decedents dying, and transfers made, after December 31, 2009. (Emphasis added).

As the title and text of TRUIRJCA § 301(e) clearly state, TRUIRJCA § 301(e) is merely an effective date provisions that provides a December 31, 2009 effective date for each amendment or repeal set forth in TRUIRJCA § 301 except where the provisions of TRUIRJCA § 301 state a different effective date. For example, the effective date of TRUIRJCA § 301(b)'s amendment of IRC § 2505(a) reads "[o]n and after January 1, 2011." In contrast, TRUIRJCA § 301(a) does not "otherwise provide" an effective date for its amendments to the Internal Revenue Code. Accordingly, all amendments made to the Internal Revenue Code by TRUIRJCA § 301(a) "apply to estates of decedents dying, and transfers made, after December 31, 2009."[5]

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[5] 1 U.S.C. § 109, cited in the Memorandum Decision, does not change this result. That statute is a

That TRUIRJCA § 301(e) is merely an effective date provision and not a suggestion that "there is an exception somewhere within TRUIRJCA § 301 that renders TRUIRJCA § 301's amendments . . . inapplicable to some estates of decedents whose death occurred after 2009" (Memorandum Decision, p. 11), is also made clear by a complete review of the full text of TRUIRJCA. Almost every section[6] of TRUIRJCA that contains amendments to the Internal Revenue Code concludes with an "EFFECTIVE DATE" section. Each of these effective date sections[7] begin with the clause "except as otherwise provided" if the section makes two or more amendments to the Internal Revenue Code with different effective dates. If the effective dates of the amendments to the Internal Revenue Code made by a section of TRUIRJCA are all the same, the effective date provision simply states the effective date for all amendments made by that section of the Public Law.[8] Clearly, therefore, it is incorrect to construe the "except as otherwise provided" language of TRUIRJCA § 301(e) (effective date provision) as a suggestion that the repeal of § 1022

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general savings clause, which provides that "[t]he repeal of any statute shall not have the effect to release or extinguish any ***penalty, forfeiture, or liability*** incurred under such statute, ***unless the repealing Act shall so expressly provide***, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." (Emphasis added). The purpose of this savings provision was "to abolish the common-law presumption that the repeal of a criminal statute resulted in the abatement of 'all prosecutions which had not reached final disposition in the highest court authorized to review them.'" *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 660 (1974). A carry-over basis is not a penalty, forfeiture, or liability and there is no pertinent case law to bridge this gap. To be sure, TRUIRJCA § 301(a) does indeed "expressly provide" for the repeal of § 1022 as though it "had never been enacted," such that it would not "remain in force" even if 1 U.S.C. § 109 were applicable.

[6] Rare exceptions to this general rule include § 101(c), which amends IRC § 23 by adding a Sunset Provision that, by its own terms, expressly states the date it will be effective.

[7] *See* TRUIRJCA §§ 301(e), 302(f), 754(e).

[8] *See, e.g.*, TRUIRJCA §§ 402, 701, 702, 760, etc.

from the Internal Revenue Code was anything short of total for decedents dying after December 31, 2009.

B. I.C. § 63-3004 does not Incorporate Repealed § 1022 into the Idaho Act.

The Court's Memorandum Decision indicates that the basis calculation provided by repealed § 1022 was "in effect" with respect to the Estate for federal income tax purposes and, therefore, incorporated into the Idaho Act as "one application of the Internal Revenue Code" by I.C. § 63-3004. (Memorandum Decision, p. 12.) The error in that interpretation is that I.C. § 63-3004 clearly only incorporates into the Idaho Act provisions of federal tax law in effect *as part of the Internal Revenue Code* on January 1, 2012. Off-code provisions of federal tax law not then-part of the Internal Revenue Code, such as the Public Law Election and repealed § 1022, are therefore not incorporated into the Idaho Act.

In I.C. § 63-3004, the words "in effect" modify the term "Internal Revenue Code of 1986." The plain meaning of the word "effect" reads "[t]he operation of a law, of an agreement, or an act." *See* Black's Law Dictionary 355 (6th ed. 1991) (also noting that "[t]he phrases 'take effect,' 'be in force,' 'go into operation,' etc., are used interchangeably."). Therefore, the group of federal statutes incorporated into the Idaho Act by I.C. § 63-3004 must be both part of the Internal Revenue Code of 1986 on January 1, 2012 and "in force" or "in effect" on that date. Although the basis calculation method provided by repealed § 1022 was "in effect" with respect to the Estate for federal income tax purposes, § 1022 itself was not part of the Internal Revenue Code on January 1, 2012 because, as discussed above, TRUIRJCA totally and completely repealed it from the Internal Revenue Code.

Accordingly, the Internal Revenue Code on January 1, 2012 did not include § 1022 in its codified text. Consequently, I.C. § 63-3004 did not incorporate § 1022 into the Idaho Act.

The Idaho Attorney General and the Estate have the same interpretation of the words "in effect" as used in I.C. § 63-3004: the Idaho Act only incorporates those sections of the Internal Revenue Code that are "in effect" as part of the Internal Revenue Code on the effective date of the relevant amendment to I.C. § 63-3004 (i.e., January 1, 2012). Other Provisions of federal tax law that affect the calculation of a taxpayer's federal taxable income, even those provisions that were part of the Internal Revenue Code at some other point in time, are not incorporated into the Idaho Act if they are not in effect as part of the Internal Revenue Code of 1986 as of I.C. § 63-3004's effective date.

The Idaho Attorney General accurately and cogently explained this concept in a 1995 Opinion addressed to the Commission. In that opinion, the Idaho Attorney General responded to the Commission's inquiry as to whether a provision of the 1995 Self-Employed Health Insurance Act ("SEHIA"), Pub. L. No. 104-7 that retroactively provided a deduction for certain health insurance costs under § 162(*l*)(6) of the Internal Revenue Code, was incorporated into the Idaho Act by I.C. § 63-3004. 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938. The Attorney General noted that President Clinton signed SEHIA into law on April 11, 1995. That date fell after the January 1, 1995 effective date (and the enactment date) of Idaho's then-latest amendment to I.C. § 63-3004 incorporating the Internal Revenue Code "as amended, and in effect on the first day of January, 1995." *Id.* The Attorney General advised that "[t]he Internal

Revenue Code 'as amended, and in effect on the first day of January, 1995' did not permit [the] deduction" because the § 162(*l*)(6) deduction was not part of the Internal Revenue Code on January 1, 1995 and, therefore, "not a deduction available for the computation of Idaho taxes under present Idaho Law." *Id.* Therefore, the Idaho Attorney General instructed the Commission that the deduction was not incorporated into Idaho law for purposes of I.C. § 63-3004, leaving Idaho taxpayers ineligible to apply that deduction on their 1994 Idaho tax returns. *Id.*

The 1995 Attorney General Opinion involved strikingly similar issues to the case at hand. The § 162(*l*)(6) deduction, was unquestionably "in effect" for purposes of federal tax law for the 1994 tax year. Nonetheless, Idaho law did not incorporate it as part of "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 1995" because it was not codified as part of the Internal Revenue Code on January 1, 1995. For that reason, the Idaho Attorney General held that the 162(*l*)(6) deduction applied "retroactively for 1994 *federal* tax returns, ***but not for 1994 Idaho tax returns***." *Id.* (emphasis added).[9] This opinion also provides yet another example where taxable income reported by a taxpayer to the Internal Revenue Service was not the identical sum reported to Idaho notwithstanding the general policy declaration of I.C. § 63-3002.[10]

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[9] Importantly, the Idaho Attorney General cited no other "modifications contained in Idaho law" for the purpose of departing from I.C. § 63-3002's precatory call for similar income tax reporting at the federal and state level. I.C. § 63-3004's limited incorporation of only the *codified* provisions of the Internal Revenue Code of 1986 in effect on January 1, 1995 was the only relevant exception to the general policy declaration of I.C. § 63-3002.

[10] In the Memorandum Decision, the Court emphasized in a footnote that Idaho's income tax forms "are designed to account for the adjustments to federal taxable income for which Idaho

Just as the Idaho act did not incorporate the IRC § 162(*l*)(6) deduction because it was not part of the Internal Revenue Code on January 1, 1995, the Internal Revenue Code on January 1, 2012 did not include the Public law Election and repealed § 1022 in its codified text. Although the Public Law Election and the basis calculation formula provided by repealed § 1022 were very much "in effect" as off-code provisions for federal tax reporting purposes, simply being "in effect" at the federal level is not enough. Provisions of the Internal Revenue Code must be both (1) "in effect" and (2) part of the Internal Revenue Code as of the relevant date provided by I.C. § 63-3004 (in our case January 1, 2012). The IRC § 162(*l*)(6) deduction at issue in the 1995 Attorney General Opinion was in effect and part of *a* version of the Internal Revenue Code of 1986. However, the deduction was not allowed for Idaho income tax purposes because it was not part of the version of the Internal Revenue Code of 1986 that existed on January 1, 1995. Likewise, neither repealed § 1022 nor the Public Law Election were part of the version of the Internal Revenue Code that existed on January 1, 2012. Accordingly, these provisions were not incorporated into Idaho Act by I.C. § 63-3004 and should not be considered in calculating the Estate's 2012 Idaho taxable income.

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law provides" and cited the "SAMPLE" federal return attached to the Estate's amended Idaho income tax return as additional support for its holding that no basis step-up was permissible. However, a review of the Schedule B of the Idaho income tax return form shows options for "Other additions" and "Other subtractions." While the estate utilized the "SAMPLE" federal return in order to clearly illustrate its calculations, it could just as easily have written in the basis step-up difference as an "Other subtraction" just as a 1994 Idaho filer who claimed the federal health care deductions discussed in the 1995 Attorney General Opinion would almost certainly have to account for their inapplicability under Idaho law as an "Other addition." Thus, Idaho's tax forms do not even remotely set forth an exhaustive list of Idaho's modifications of the federal tax reporting rules.

C. If the Court's Interpretation of I.C. § 63-3004 is Plausible, then I.C. § 63-3004 is Ambiguous which Requires Interpretation in the Estate's Favor.

Ambiguity exists when a statute's meaning is "so doubtful or obscure that 'reasonable minds might be uncertain or disagree as to its meaning.'" *BHA Investments, Inc. v. City of Boise*, 138 Idaho 356, 358 (2003) (quoting *Hickman v. Lunden*, 78 Idaho 191, 195 (1956)); *see also Hickman*, 78 Idaho, at 195 (noting that a statute is open to construction "where the language used in the statute requires interpretation, that is, where the statute ***is ambiguous***, or ***will bear two or more constructions***.") (quoting 50 Am. Jur., Statutes, 204, § 225) (emphasis added). The Memorandum Decision interprets "in effect," for purposes of I.C. § 63-3004, to incorporate provisions of federal law that apply to the calculation of taxpayer's federal taxable income regardless of whether or not those provisions of federal law are part of the Internal Revenue Code (i.e., Title 26 of the United States Code) on the effective date of the relevant amendment to I.C. § 63-3004 (i.e., January 1 of the tax year at issue).

As indicated above, however, the Court's construction of I.C. § 63-3004 conflicts with the Idaho Attorney General's reasonable and significantly more compelling interpretation of that statute as incorporating into the Idaho Act only portions of federal tax laws that are in effect as part of the Internal Revenue Code of 1986 on the effective date of the relevant version of I.C. § 63-3004. The Idaho Attorney General amply explained and supported this interpretation in the 1995 Opinion summarized above. By applying the same reasoning as the Attorney General, the Estate's interpretation of "in effect" is clearly supported by the plain language of the statute and illustrates

that I.C. § 63-3004 can reasonably be given different constructions.[11] Accordingly, the phrase "in effect" as set forth in I.C. § 63-3004 is, at the very least, ambiguous. Therefore, it is an error not to construe that statute in favor of the Estate. *See J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968) ("The Idaho Act, like all tax statutes, must be construed as favorably as possible to the taxpayer and strictly against the taxing authority.").

D. The Court's Interpretation of the Phrase "In Effect" as Used in I.C. § 63-3004 Contradicts or Renders Superfluous Other Provisions of that Same Statute.

The Attorney General analysis in the above cited 1995 opinion, raises another problem with the Court's broad construal of "in effect" as the phrase is used in I.C. § 63-3004. As the 1995 opinion noted, even though retroactive provisions of federal tax law are "in effect" for federal income tax purposes, I.C. § 63-3004(b) only respects the Internal Revenue Code's effective dates if the effective dates are part of the Internal Revenue Code prior to the effective date of the latest amendment to I.C. § 63-3004. The expansion of I.C. § 63-3004(a) to incorporate federal tax provisions that are effective against the taxpayer at the federal level, but that are not part of the Internal Revenue Code on I.C. § 63-3004's effective date, contradicts subsection (b). For example, SEHIA § 162(*l*)(6)'s deduction was expressly made "in effect" at the federal level for 1994. Under the Court's interpretation of I.C. § 63-3004(a), this fact alone would incorporate that retroactive provision into the Idaho Act irrespective of the date it was signed into law by the President.

[11] We assume here for the sake of argument that the construction set forth in the Memorandum Decision is reasonable. As discussed above, the Estate does not believe that the construction or application of I.C. § 63-3004 as set forth in the Memorandum Decision is reasonable.

However, as explained in the Attorney General's 1995 Opinion, I.C. § 63-3004(b) does not recognize an effective date unless the effective date was part of the Internal Revenue Code as of the effective date of the latest amendment to I.C. § 63-3004, regardless of whether or not they are "in effect" as of that date for federal income tax purposes. As such, the Court's construction of I.C. § 63-3004(a)'s use of "in effect" places it in direct conflict with I.C. § 63-3004(b). The Court's construction disregards a critical canon of statutory construction. As the Idaho Supreme Court noted:

> The rule that statutes *in pari materia* are to be construed together means that each legislative act is to be interpreted with other acts relating to the same matter or subject. Statutes are *in pari materia* when they relate to the same subject. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and so far as still in force brought into harmony by interpretation.

Grand Canyon Dories v. Idaho State Tax Commission, 124 Idaho 1, 4 (1993).

Furthermore, construing I.C. § 63-3004(a) to encompass all federal tax laws effective against the taxpayer would eliminate the need for I.C. § 63-3004(b) that address effective date provisions of the Internal Revenue Code, which are by nature in effect under federal law, thus rendering subsection (b) superfluous in violation of the canon of construction mandating the presumption that legislatures do not enact superfluous statutes. *See Sweitzer v. Dean*, 118 Idaho 568, 572 (1990) ("It is incumbent upon [a] Court to interpret a statute in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a

superfluous statute."). Therefore, applying I.C. § 63-3004(a) harmoniously with I.C. § 63-3004(b) is best achieved by interpreting "in effect" as the Idaho Legislature's incorporation of a "snapshot" of the statutes codified in the Internal Revenue Code as of January 1, 2012. Neither the Public Law Election nor repealed § 1022 appear in that snapshot. At the very least, the potential for tension between the two subsections creates an ambiguity that must be construed in favor of the Estate. *J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968) ("The [Idaho Act], like all tax statutes, must be construed as favorably as possible to the taxpayer and strictly against the taxing authority.").

E. Idaho's Rejection of the Public Law Election does not have to be "Specifically Provided" in the Idaho Act.

The Court's reliance on I.C. § 63-3011C, which defines Idaho Taxable Income as "taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter" is also misplaced. That statute references "taxable income" which I.C. § 63-3011B defines as "federal taxable income ***as determined under the Internal Revenue Code***." (Emphasis added). As noted, the phrase "Internal Revenue Code" is defined in I.C. § 63-3004. Since neither the Public Law Election nor repealed § 1022 were part of the Internal Revenue Code as incorporated into Idaho law under I.C. § 63-3004 on January 1, 2012, they are not relevant to the calculation of "taxable income" under the Idaho Act. Accordingly, there is no requirement that the Idaho Act must explicitly specify that both provisions are to be ignored when calculating Idaho taxable income.

F. Incorporating the Public Law Election and Repealed § 1022 into the Idaho Act without Setting Forth the Tax of those Provisions within the Act Violates the Idaho Constitution.

Not addressed in the Court's Memorandum Decision, or the arguments of the Commission, is the unconstitutionality of incorporating the Public Law Election and repealed § 1022 as amendatory references of the Idaho Act. (Memorandum in Support of Motion for Partial Summary Judgment, pp. 20-22.) Article III, § 18 of the Idaho Constitution provides: "No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length." While this constitutional prohibition "does not require the whole act containing the section amended to be republished in full" it does "require[] republication of the section which it purports to amend." *Noble v. Bragaw*, 85 P. 903, 904 (Idaho 1906).

Under the holding set forth in the Memorandum Decision, I.C. § 63-3004 was deemed to (1) incorporate Title 26 of the United States Code into the Idaho Act as it existed on January 1, 2012 and (2) simultaneously amend the application of Title 26 to include the Public Law Election and repealed § 1022. As discussed above, the text of the Public Law Election and § 1022 is not set forth as part of Title 26 as of January 1, 2012. Furthermore, when purportedly incorporating the Public Law Election and § 1022 as part of Title 26, the Idaho Legislature did not set forth the full text of either provision within the Idaho Act. Accordingly, the purported incorporation of the Public Law Election and repealed § 1022 would be void as an unconstitutional amendatory reference.

As previously explained in the Estate's Memorandum in Support of Partial Summary Judgment, incorporating an entire body of law – such as the Internal Revenue Code of 1986 – is

permissible under the Idaho Constitution. *See Noble v. Bragaw*, 85 P. 903, 906 (Idaho 1906) (quoting *People v. Mahaney*, 13 Mich. 481, 496-97 (1865) ("[A]n act complete in itself is not within the mischief designed to be remedied by [Article III, § 18 of the Idaho Constitution], and cannot be held to be prohibited by it without violating its plain intent."). However, adopting by reference the Public Law Election and repealed § 1022 into the Idaho Act has the effect of improperly amending the January 1, 2012 version of Title 26 that was incorporated into the Idaho Act.[12] Thus, any incorporation of the Public Law Election as an amendment to I.C. § 63-3004, or any other provision of the Idaho Act, would be void as an unconstitutional amendatory reference.

IV. CONCLUSION

Based on the foregoing, Plaintiff, the Estate of Zippora Stahl, respectfully requests this Court GRANT its Motion for Reconsideration and for Amendment of Judgment.

DATED this 3rd day of September, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

[12] Despite the practical problems inherent in amendatory references in any jurisdiction's laws, the U.S. Constitution does not prohibit amendatory references for purposes of federal law. Thus, the Public Law Election is valid for federal tax purposes even though it cannot be incorporated into the Idaho Act by way of I.C. § 63-3004 without violating the Idaho Constitution.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, -vs- IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CVOC1500106 **DEFENDANT'S MEMORANDUM OPPOSING PLAINTIFF'S MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT**

COMES NOW, Defendant, Idaho State Tax Commission (Commission), by and through its counsel, pursuant to this Court's Order Establishing Briefing Schedule, dated September 11, 2015, and Rule 7(b)(3), Idaho Rules of Civil Procedure, and submits its memorandum in opposition to the motion for reconsideration and for amendment of judgment by Plaintiff, the Estate of Zippora Stahl (Estate).

I.

INTRODUCTION

The Court's Memorandum Decision and Order on Cross-Motions for Summary Judgment and the resulting Judgment are correct. There is no legal error to fix. The Court was right when it concluded that the term "Internal Revenue Code," as defined in Idaho Code § 63-3004, includes Internal Revenue Code section 1022 (Section 1022) insofar as the Estate is concerned.

The Court's Decision and Judgment should stand.

II.

STANDARD OF REVIEW

This Court's ruling on a motion to amend a judgment under I.R.C.P. 59(e) will not be disturbed absent an abuse of this Court's discretion. Horner v. Sani-Top, Inc., 143 Idaho 230, 233, 141 P.3d 1099, 1102 (2006). Likewise, "[t]he decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." Johnson v. Lambros, 143 Idaho 468, 473, 147 P.3d 100, 105 (Ct. App. 2006).

To determine whether there is an abuse of discretion, an Idaho appellate court considers "whether (1) the court correctly perceived the issue as one of discretion; (2) the court acted within the boundaries of such discretion and consistently with legal standards applicable to specific choices; and (3) the court reached its decision by an exercise of reason." Lee v. Nickerson, 146 Idaho 5, 9, 189 P.3d 467, 471 (2008).

III.

ANALYSIS

A. The Court should not alter the judgment herein; the Court correctly concluded that Internal Revenue Code section 1022 was "in effect on the first day of January 2012" as that phrase is used in Idaho Code section 63-3004, with respect to the Estate.

The Court should deny the Estate's motion to amend the judgment because the legal basis for the judgment is correct: not only was Section 1022 not repealed as it relates to the Estate, but the Estate's actual use of Section 1022 to determine its federal taxable income is evidence that, as a matter of law, Section 1022 still existed and was in effect. The Court should exercise its discretion and deny the Estate's motion.

1. The plain language of TRUIRJCA indicates that Section 1022 was not totally repealed by TRUIRJCA Section 301(a).

The Court's analysis of the status and effect of Section 1022 is plainly correct. TRUIRJCA § 301(c) authorized the Estate to opt out of the TRUIRJCA repeal and remain under the provisions Internal Revenue Code then in effect, which contained Section 1022. As the Court concluded, there is no way around the conclusion that Section 1022 was "in effect on the first day of January 2012," with respect to the Estate: the plain language of TRUIRJCA § 301(c) compels this conclusion.

Section 1022 was <u>not</u> entirely abrogated. Section 301(c), TRUIRJCA states very clearly that there is a special situation carved out for estates of decedents dying in 2010. Section 301(c), TRUIRJCA states that "notwithstanding" (or "in spite of") Section 301(a), TRUIRJCA, these certain decedents' estates may elect to apply Section 1022 as though Section 301(a)'s amendments do not apply. When the reader disregards the amendments made by Section 301(a),

Section 1022 remains intact, unaffected, and determines the basis calculation for those estates that elected this option.

The Estate contends that if Congress had intended to make the basis concepts of Section 1022 inapplicable to taxpayers as a provision of the Internal Revenue Code, it would not have partially repealed it in TRUIRJCA, but Congress would have amended the text of Section 1022 to provide for application of Section 1022's basis provisions only to estates making the election. But this is merely opinion on the part of the Estate. If Congress chose to create Section 1022 as it did by inserting it into the Internal Revenue Code via EGTRRA, it is eminently sensible that Congress would manipulate its effective dates via another public law. The hurdle that the Estate cannot get over is that Section 1022 was obviously not entirely repealed as it relates to that special case of decedents' who died during 2010.

Moreover, the Estate seems to think that Section 301(a) being printed first in time in Title III of TRUIRJCA somehow makes the amendatory repeal total and complete for all instances thereafter. (Estate Memo. at 4.) ("TRUIRJCA § 301(a) completely and unambiguously eliminated § 1022 from the Internal Revenue Code ab initio for all decedents dying after December 31, 2009.") However, that is an unnecessarily narrow view (and again, as before, focuses too heavily on the four corners of the page). Instead, when TRUIRJCA § 301(c) states concurrently with the "repeal" in TRUIRJCA § 301(a) that a special case is carved out from any repeal for decedents who died during 2010, it means that any repeal of Section 1022 was inapplicable to those decedents' estates. The Court got it right: the amendments in Section 301(a), that do away with Section 1022, are simply inapplicable to the special class (of which the Estate is a member) to which Section 301(c) applies.

Moreover, the Estate incorrectly characterizes TRUIRJCA 301(e) as merely "an effective date provision." (Estate Memo. at 8.) However, this is not true. The language of Section 301(e) ("[e]xcept as otherwise provided in this section") reinforces and bolsters the conclusion that the exception found in Section 301(c) makes the amendments in Section 301(a) inapplicable to the special class of estates. The Estate seems to have skipped over the language "in this section" in its analysis of Section 301(e). (See Estate Memo. at 7.) Moreover, the Estate's focus deprives the words of TRUIRJCA 301(e) of meaning. Instead of nullifying statutory language, it is better to interpret the meaning of a provision by asking: "What does the language of provision actually mean?" Section 301(e) actually provides that, "[e]xcept as otherwise provided **in this section,**" the amendments of Section 301 apply after December 31, 2009. Id. (emphasis added). As the Court pointed out, this means that Section 301(c) is one of those "as otherwise provided" parts in Section 301. The Estate cannot get around Section 301(c)'s inescapable carve-out of the amendment in Section 301(a).

2. The Estate's actual use and application of Section 1022 in determining its federal taxable income is evidence that it was still in effect.

The Estate's arguments that the TRUIRJCA repeal of Section 1022 was "total and complete" fails to overcome the Court's reasoning and finding that Internal Revenue Code § 1022 continued to be in effect "insofar as the Estate (among other estates that made the Section 1022 Election) is concerned." (Decision and Order, p. 12). Not only was Section 1022 not totally repealed, the Estate directly applied it in determining basis, and by extension federal taxable income. Section 1022 was the mechanism that the Estate used to determine its federal taxable income. Section 1022 was in effect and the Estate chose to apply it.

The Estate is incorrect to characterize its use of Section 1022 as indulging in some sort of "legal fiction." (Estate Memo. at 7.) The Estate contends that the language "as though" in Section 301(c) means that Congress acknowledged that Section 1022 no longer existed. The Estate purports to transform Section 1022, then, into a wholly separate document that is no longer part of the Internal Revenue Code, but is included under a theory of incorporation by reference. This argument is unhelpful to this discussion. As shown above, Section 1022 was not totally repealed for estates where the decedent passed away in 2010.

Even assuming *arguendo* that Congress created a legal fiction by use of the phrase "as though" in Section 301(c), it actually avails the Estate nothing. That is because elsewhere in TRUIRJCA, Congress uses similar allegedly "legal fiction" language. In fact, TRUIRJCA 301(a) itself (the section the Estate relies on for its assertion that the repeal of Section 1022 was total) uses similar "legal fiction" language as Section 301(c). TRUIRJCA 301(a) provides that EGTRRA Part E (the part that inserted Section 1022 into the IRC) is amended to read "as such provision **would** read **if** such subtitle had never been enacted." Id. (emphasis added). This highlighted language is language of supposition, every bit as much as that contained in Section 301(c).

Thus, the very section that the Estate highlights (Section 301(a)) for support that the repeal of Section 1022 was total, contains similar "legal fiction" language. To be consistent, if the supposition language in Section 301(c) creates a legal fiction, then the supposition language in Section 301(a) also creates a fiction, and the totality of the "repeal" of Section 1022 is equally undercut. It is, therefore, unhelpful for the Estate to characterize the "as though" language in TRUIRJCA 301(c) as creating some legal fiction.

The bottom line here is that the Estate directly applied Section 1022 as the mechanism to determine its federal taxable income. Internal Revenue Code section 1022 was in effect and not yet totally repealed as evidenced by the Estate's ability to apply it.

3. The Estate's relentless focus on the literal "codified" text of the 2012 version of Internal Revenue Code is misguided.

The Estate's arguments are fixated with the narrow idea that Section 1022 was not "codified" within the four corners of the 2012 version of Internal Revenue Code; that if someone were to pick up an official printed Internal Revenue Code book sometime during the year 2012, they would find an entry indicating that Section 1022 was "repealed." (Presumably, the reader would also see a reference to TRUIRJCA where the reader would see that Section 1022 remained in effect for certain taxpayers.)

But whether something is codified within the IRC is not what this Court is to be concerned with. That is not the question that Idaho law requires to be answered. Rather, the I.C. § 63-3004 definition of Internal Revenue Code requires that we look at the Internal Revenue Code "as amended and in effect" (not "codified") on the first day of January 2012. As explained above, Section 1022 was "in effect on the first day of January 2012," as that phrase is used in I.C. § 63-3004, with respect to the Estate. (Memo. Decision at 11.)

4. The Court's ruling is also legally correct because it comports with the clear meaning of the Idaho Legislature's declaration of intent that the Estate's Idaho taxable income be equal to its federal taxable income.

The Idaho Legislature declared its intent that the taxable income reported by taxpayers each year to the Internal Revenue Service be the identical sum reported to Idaho. Idaho Code § 63-3002. By making the election, federal law then required the Estate to use a modified carryover method under Section 1022 in determining federal taxable income. It would be

contrary to stated intent of Idaho law for the Estate to use a stepped-up basis under Internal Revenue Code section 1014 to determine the Estate's Idaho taxable income. As this Court stated: "Since an Internal Revenue Code provision—Section 1022—dictates that the Estate use a modified carryover basis, rather than an "off-code" provision, Idaho's income tax statute plainly require the same basis." (Memo. Decision at 9.) And, the Estate is required "to use a modified carryover basis for Idaho income tax purposes." (Memo. Decision at 14.)

5. The Estate's application of the Idaho Attorney General's 1995 Opinion is misleading and erroneous because the 1995 Opinion addressed a scenario that is different from the Estate's case.

The Estate is incorrect when it states that the Idaho Attorney General interprets the words "in effect" as used in Idaho Code § 63-3004 in the same way as the Estate. (Estate Memo. at 11.) In support of this statement, the Estate points to an Idaho Attorney General Opinion from the year 1995. (Estate Memo. at 11-13.) However, reference to this Opinion for support of the Estate's position in this case is all wrong because the facts of that case do not line up with this one.

It is a logical fallacy to apply the Idaho Attorney General's 1995 Opinion (Opinion) to this case for the following reason: the provision of the Internal Revenue Code at issue there had not been enacted and had never existed at all on January 1st of the year at issue; whereas in the case currently before the Court, Section 1022 and the public law provision allowing the 1022 election did exist and were in effect on January 1st of the year at issue.

The Opinion concluded rightfully that even though taxpayers could file amended federal returns for the 1994 taxable year to take advantage of the provisions of the new IRC § 162(l)(6), taxpayers could not do so for their 1994 state of Idaho returns. The Opinion explained:

> The Internal Revenue Code "as amended, and in effect on the first day of January, 1995" did not permit a deduction for health care costs incurred by self-employed individuals. Subsection (b) of Idaho Code § 63-3004 recognizes, for Idaho income tax purposes, retroactive effective dates of amendments to the Internal Revenue Code, but only if the amendment to the Internal Revenue Code is "prior to the effective date of the latest amendment to this section." The latest amendment to Idaho Code § 63-3004 was by H.B. 117 of the 1995 Idaho Legislature. That bill, now 1995 Idaho Session Laws, chapter 79, § 1, was signed into law by Governor Batt on March 10, 1995. Its effective date was January 1, 1995. Both dates are before President Clinton's signature of Pub. L. No. 104-7 on April 11, 1995. Thus, the deduction for health care costs incurred by self-employed individuals in 1994 is not a deduction available for the computation of Idaho taxes under present Idaho law.

Atty. Gen. Op. No. 95-02, *available at* http://www.ag.idaho.gov/publications/op-guide-cert/1995/1995index.html. The issue in the Opinion was that IRC § 162(l)(6) did not exist at all until it was signed into law on April 11, 1995; and under Idaho Code § 63-3004, the federal amendment that brought IRC § 162(l)(6) into existence and effect needed to happen before January 1, 1995 for taxpayers to be able to apply it in an amended 1994 Idaho tax return.

It is misleading for the Estate to emphasize to this Court that the Internal Revenue Code provision in the Opinion "was unquestionably 'in effect' for purposes of federal tax law for the 1994 tax year;" and further state, "[t]he IRC § 162(l)(6) deduction at issue in the 1995 Attorney General Opinion was in effect and part of a version of the Internal Revenue Code of 1986." (Estate Memo. at 12-13.) The IRC provision at issue in the Opinion was not in effect on January 1 of that year. The provision was not "part of a version of the Internal Revenue Code" on January 1 of the year at issue. The provision did not even exist until April 11 of the year at issue. In the case currently before the Court, the federal provisions that allowed the Estate to make the 1022 election did exist and were in effect on January 1 of the year at issue.

The foundation of this Court's decision is that "the Estate has no way around the conclusion that Section 1022 was 'in effect on the first day of January 2012,' as that phrase is

used in I.C. § 63-3004, with respect to the Estate." (Memo. Decision at 11.) In the Attorney General's 1995 Opinion, the provision at issue was not in effect on the first day of January of the year at issue; the Estate's analysis of the 1995 Opinion is inapplicable to Plaintiff's case and should be entirely disregarded by this Court.

6. Article III, § 18 of the Idaho Constitution does not apply to this case.

The Estate's reliance on Article III, § 18 of the Idaho Constitution as a bar to incorporating IRC § 1022 is misplaced. That section provides:

> No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

Idaho Const. art. III, § 18. The Estate seems to misperceive the meaning of this section. This section simply requires that amendments to an Idaho act must be published at full length in the bill itself. This constitutional provision is irrelevant to the matter before this Court.

IV.

CONCLUSION

In conclusion, given the reasons stated above, the Court would be well within its discretion by denying the motion for reconsideration or to amend the judgment. See, Johnson v. Lambros, 143 Idaho at 473, 147 P.3d at 105 (Ct. App. 2006); Lee v. Nickerson, 146 Idaho at 9, 189 P.3d at 471 (2008). The Court's analysis is consistent with the controlling legal standards that require a statute to be interpreted by giving it its plain meaning. It follows that this Court was correct in concluding that Section 1022 was in effect in determining the Estate's federal taxable income. This Court should deny the Estate's Motion for Reconsideration and Amendment of Judgment.

DATED this 24th day of September 2015.

IDAHO STATE TAX COMMISSION

PHIL N SKINNER
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2015, I have served a true and correct copy of the within and foregoing Tax Commission's DEFENDANT'S MEMORANDUM OPPOSING PLAINTIFF'S MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT upon Petitioner indicated below:

NICHOLAS S MARSHALL	_____ U.S. Mail, Postage Prepaid
MAXIMILIAN HELD	_____ Hand Delivered
AHRENS DEANGELI LAW GROUP LLP	_____ Overnight Mail
PO BOX 9500	_X_ Telecopy (208) 639-7788
BOISE ID 83707-9500	_____ Email

PHIL N SKINNER
DEPUTY ATTORNEY GENERAL

Scott
Sabrina
[illegible]
10/2

NO ____________ FILED
A.M. ____________ P.M. 4:50

OCT 01 2015

CHRISTOPHER D. RICH, Clerk
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-2015-00106 PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT

Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, hereby submits this Reply in Support of Motion for Reconsideration and for Amendment of Judgment.

1. Repealed IRC § 1022 was not Incorporated into the Idaho Act because it was not Part of the Internal Revenue Code of 1986 as Amended and in Effect on January 1, 2012.

In its Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment ("Response"), the Idaho State Tax Commission ("Commission") insists that repealed §

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1022 of the Internal Revenue Code of 1986 ("IRC") was incorporated into the Idaho Income Tax Act, I.C. § 63-3001 *et seq.* (the "Idaho Act") on January 1, 2012 "insofar as the estate is concerned" as a result of the Estate's use of the uncodified § 301(c) "Public Law Election" of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 ("TRUIRJCA") and the Estate's use of the basis rules set forth in repealed IRC § 1022 on its federal return. The Commission's reasoning, which fails to address many of the Estate's arguments set forth in the Motion for Reconsideration, are clearly not supported by a plain reading of either federal law or the Idaho Act.

a. I.C. § 63-3004 Only Incorporates the Internal Revenue Code into the Idaho Act.

This is a straight forward case of statutory interpretation. Idaho Code § 63-3011B defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." During the tax year at issue in this matter, I.C. § 63-3004 defined "Internal Revenue Code," as "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012." IRC § 7701(a)(29) defines "Internal Revenue Code of 1986 as "this title," meaning Title 26 of the United States Code. *See also* IDAPA 35.01.01.010.08 (incorporating the Internal Revenue Code's definitions terms not otherwise defined in the Idaho Act or the Commission's Income Tax Administrative Rules). Notwithstanding the Commission's disregard of the unambiguous definition of "Internal Revenue Code" as defined in both state and federal law, statutes set forth in the United States Code "establish prima facie the laws of the United States" and that presumption applies to all courts of every state. 1 U.S.C. § 204(a). Although the Estate has explained the concept in detail, the Commission continues to ignore this presumption in an attempt to expand I.C. § 63-3004's definition of "Internal Revenue Code" beyond its plain and unambiguous meaning and further suggests that this Court should not be concerned with the mere words written within the "four corners" of the United States Code. (Defendant's Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of

Judgment, p. 4.) Likewise, the Commission has failed to provide any explanation of why it believes the presumption under 1 U.S.C. § 204(a) should not apply to this case.

b. Section 1022's Repeal from the Internal Revenue Code of 1986 was Total.

IRC § 1022 does not appear in any version of the Internal Revenue Code subsequent to TRUIRJCA's passage on December 17, 2010. This is because § 301(a) of TRUIRJCA, under no uncertain terms, amended the Internal Revenue Code to read as if IRC § 1022 "had never been enacted." The December 17, 2010 repeal of § 1022 from the Internal Revenue Code was unqualified and unconditional. Section 301(a) of TRUIRJCA includes no proviso limiting the repeal from the Internal Revenue Code to taxpayers who do not make the Public Law Election, and it does not state that § 1022's repeal from the Internal Revenue Code is "subject to" the Public Law Election. Rather, the Public Law Election merely allows an estate to act "as though ***the amendments*** made by" § 301(a) do not affect its federal income tax basis. (Emphasis added).[1] Moreover, TRUIRJCA § 301(a) does not utilize Congress' "stated means" of amending the text of the Internal Revenue Code to make the provisions of § 1022 applicable to taxpayers making the Public Law Election and also making the provisions of IRC §§ 1014 and 2001 inapplicable to those taxpayers. *See* (Plaintiff's Memorandum in Support of Motion for Reconsideration and for Amendment of Judgment, p. 6.) Notably, the Commission's Response provides no explanations as to why Congress would not have used those "stated means" of amending the Internal Revenue Code if it had not intended for § 1022's repeal from the Internal Revenue Code to be complete.

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[1] The Commission's attempt to equate § 301(a)'s phrase "would read if" to the Public Law Election's use of the phrase "as though" completely overlooks that § 301(a) expressly "amended" the Internal Revenue Code whereas the Public Law Election does not purport to amend the Internal Revenue Code. *See* (Defendant's Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment, p. 6.)

c. The Commission's Construction of TRUIRJCA § 301(e) is not Supported by the Act's Plain Language.

The Commission mischaracterizes TRUIRJCA § 301(e)'s "except as otherwise provided" language as evidence that § 301(a) did not completely repeal § 1022 from the Internal Revenue Code as to estates that make the Public Law Election. Under the Commission's construction, TRUIRJCA § 301(e) plays the central role in a scheme that creates two different Internal Revenue Codes: (1) a first version containing IRC § 1022 but not IRC §§ 1014 and 2001, and (2) a second version lacking IRC § 1022 but containing IRC §§ 1014 and 2001. In this hypothetical scenario, making the Public Law Election would automatically cause the first version of Internal Revenue Code to become "in effect" for purposes of I.C. § 63-3004. That interpretation ignores the fact that the language of TRUIRJCA § 301(e) in no way suggests that the amendments made to the Internal Revenue Code by § 301 do not actually apply to the Internal Revenue Code with respect to all taxpayers. Rather § 301(e) is a standard effective date provision regularly used in public laws that amend the Internal Revenue Code. *See* (Plaintiff's Memorandum in Support of Motion for Reconsideration and for Amendment of Judgment, pp. 7-10.) For instance, the effective date provision of § 302(f) of TRUIRJCA is virtually identical to § 301(e), yet there are no elections or other exceptions contained in § 302 that could conceivably indicate that its amendments to the Internal Revenue Code are not total. *See* copy of TRUIRJCA § 302 attached hereto as **Tab "A."**

TRUIRJCA § 301(e)'s use of the phrase "in this section" does not change this analysis. As the Estate thoroughly explained in its Motion for Reconsideration, TRUIRJCA § 301(b), which takes effect on January 1, 2011 is the sole exception anywhere in all of TRUIRJCA § 301 to the 2010 effective date otherwise set forth in § 301(e). There is no credible argument that the "section" referenced in § 301(e) is anything other than § 301, in its entirety. Within § 301 there is but one plain and obvious exception to the general 2010 effective date, and that is set forth in § 301(b). The § 301(c) Public Law Election, meanwhile, is a *subsection* of TRUIRJCA. The Commission's argument that the Estate is somehow "nullifying" the phrase "in this section" is

incomprehensible. Accordingly, neither the Public Law Election nor § 301(e) of TRUIRJCA undermine § 301(a)'s complete and total retroactive repeal of IRC § 1022 from the Internal Revenue Code of 1986.[2]

2. The Idaho Act's Declaration of Intent does not Incorporate Provisions of Federal Tax Law that were not Codified into the Internal Revenue Code of 1986 as of January 1, 2012.

a. I.C. § 63-3002 does not Trump Specific Terms of the Idaho Act.

The Commission, once again, persists in overextending the Idaho Act's Declaration of Intent statute, I.C. § 63-3002, as a crutch to disregard the plain language contained in the Internal Revenue Code, TRUIRJCA, and the Idaho Act itself. As an overarching principle, however, a statute must be interpreted according to its plain language, and "when the language of a statute is definite, courts must give effect to that meaning ***whether or not the legislature anticipated the statute's result***." *In re Permit No. 36-7200 in Name of Idaho Dept. of Parks and Recreation*, 121 Idaho 819, 824 (1992) *abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011) (emphasis added). Moreover, I.C. § 63-3002 acknowledges that federal taxable income and Idaho taxable income will not always be identical, due to "modifications contained in Idaho law."

One such modification is I.C. §§ 63-3011B and 63-3004, which require taxpayers to determine their "taxable income" pursuant to the Internal Revenue Code of 1986, rather than pursuant to both the Internal Revenue Code and the general body of federal tax law which is not included in the Internal Revenue Code on I.C. § 63-3004's effective date.[3] The Idaho Attorney

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[2] In its Response, the Commission has not contested the Estate's argument in its Motion for Reconsideration that the Court erroneously applied 1 U.S.C. § 109. *See* (Plaintiff's Memorandum in Support of Motion for Reconsideration and Amendment of Judgment, pp. 8-9, footnote 5.)

[3] Since the Commission did not attempt to contradict the Estate's arguments in its Motion for Reconsideration challenging the Court's reliance on I.C. § 63-3011C, which defines "Idaho Taxable Income" as "taxable income modified pursuant to the Idaho adjustments specifically

General's 1995 Opinion, 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938 (the "1995 Opinion"), previously cited in the Estate's Motion for Reconsideration, provides an example of a taxpayer's Idaho taxable income diverging from the taxpayer's reported federal taxable income through the application of I.C. § 63-3004. To recap, the 1995 Opinion refused to apply an expired deduction for health insurance costs codified at IRC § 162(*l*) retroactively to the 1994 tax year notwithstanding an off-code provision at § 1(c) of the 1995 Self-Employed Health Insurance Act ("SEHIA"), Pub. L. No. 104-7, 109 Stat. 93, which made the deduction available at the federal level in 1994. The 1995 Opinion regarded SEHIA § 1(c) as inapplicable to the Idaho Act because "[t]he Internal Revenue Code 'as amended ***and in effect*** on the first day of January, 1995' did not permit" the deduction since SEHIA was not signed into law until April 11, 1995. (Emphasis added). The 1995 Opinion is a quintessential example of a provision that was "in effect" for purposes of federal law, but was nonetheless not part of the Internal Revenue Code as adopted into the Idaho Act via I.C. § 63-3004.

b. The Commission Misconstrues the 1995 Opinion.

The Commission's efforts to distinguish the 1995 Opinion from the present case are unavailing. Most notably, the Commission mistakenly asserts that "the provision of the Internal Revenue Code at issue [in the 1995 Opinion] had not been enacted and had never existed at all on January 1st of the year at issue." (Defendant's Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment, p. 8.) In fact, at the time of SEHIA's enactment § 162(*l*) was previously part of the Internal Revenue Code, but it had expired in 1994 due to a sunset provision codified at former § 162(*l*)(6). *See* § 162(*l*)(6) of the Internal Revenue Code of 1986 as amended and in effect on January 1, 1993 (repealed). Section 1(a) of SEHIA amended the Internal Revenue Code to *strike* retroactively former IRC § 162(*l*)(6). By retroactively repealing this sunset provision, SEHIA revived the deduction as though it had never

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provided in this chapter," it can be assumed that the Commission does not deny that the Court erred in its application of this statute. *See* (Plaintiff's Memorandum in Support of Motion for Reconsideration and Amendment of Judgment, p. 17.)

expired.

Congress' mechanism for establishing the Public Law Election is indistinguishable from the manner by which it addressed IRC § 162(*l*). In both cases, provisions of federal public laws that were uncodified at the time of Idaho's enactment of I.C. § 63-3004 for the year at issue[4] were not "in effect" as part of the Internal Revenue Code as adopted into the Idaho Act, even though they were both 100% effective and binding on the calculation of taxable income at the federal level. In other words, I.C. § 63-3004 took a snapshot of the Internal Revenue Code as it existed on January 1, 2012. Repealed IRC § 1022 simply does not appear in the snapshot. Likewise, IRC § 162(*l*) did not appear in I.C. § 63-3004's snapshot of the Internal Revenue Code as it existed on January 1, 1995.

c. <u>The Estate Made the Public Law Election *after* January 1, 2012.</u>

Even if, for the sake of argument, the Court were to accept the Commission's erroneous position that the Public Law Election caused IRC § 1022 to "remain[] in effect for certain taxpayers" who make the Public Law Election, the timing of the Estate's Public Law Election would not cause IRC § 1022 to have been incorporated into the Idaho Act as of the first day of January 2012. As mentioned on page 3 of the Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment, the Estate did not file its federal IRS Form 8939 with the Internal Revenue Service until January 17, 2012. *See* correspondence and redacted Form 8939 (without schedules and attachments), attached hereto as **Tab "B."** Since the filing of the Form 8939 is the Internal Revenue Service's exclusive method of making the Public Law Election[5], the Estate could not have placed IRC § 1022 "in effect" as to the Estate until January 17, 2012.

The 1995 Opinion explains this concept in detail, deciding not only that SEHIA § 1(a) was not part of the Internal Revenue Code "as amended, and in effect on the first day of January,

[4] Bearing in mind that the Idaho Legislature customarily updates I.C. § 63-3004 every year to incorporate all amendments to the Internal Revenue Code in existence as of January 1 for the current year.

[5] *See* Department of the Treasury Internal Revenue Service, 2010 Instructions for Form 8939, *available at* http://www.irs.gov/pub/irs-prior/i8939--2010.pdf.

1995," but also that I.C. § 63-3004(b) only recognizes retroactive effective dates of Internal Revenue Code amendments where "the amendment to the Internal Revenue Code is 'prior to the effective date of the latest amendment to this section.'" Since President Clinton did not sign SEHIA until April 11, 1995, the Attorney General properly determined that SEHIA's deletion of § 162(*l*)'s sunset provision from the Internal Revenue Code did not occur prior to January 1, 1995 (the date of the latest amendment to I.C. § 63-3004) and thus was not retroactively applicable for Idaho income tax purposes. Here, even assuming arguendo that the Commission can establish (which it cannot) that TRUIRJCA somehow creates a second version of the Internal Revenue Code that retains former IRC § 1022 when an estate makes the Public Law Election, that imaginary second version of the Internal Revenue Code could not have been "in effect" with respect to the Estate until January 17, 2012 when the Estate *made* the Public Law Election. Not having occurred *prior to* the effective date of the latest amendment to I.C. § 63-3004 for the year at issue (i.e., January 1, 2012), the Estate's use of the Public Law Election could not have been retroactively "applicable for Idaho income tax purposes" under I.C. § 63-3004(b).

d. <u>The Estate's use of IRC § 1022 Basis Principles at the Federal Level does not Mean IRC § 1022 was Part of the Internal Revenue Code.</u>

In addition, simply using and applying IRC § 1022 in determining the Estate's federal taxable income is not, as the Commission claims, "evidence that it was still in effect" as part of the Internal Revenue Code. The Estate is a U.S. taxpayer and is bound to follow all applicable U.S. tax laws regardless of whether or not those laws appear in the Internal Revenue Code or as off-code provisions of federal tax law. Accordingly, the Estate's use of repealed IRC § 1022's basis provisions at the federal level in 2012 does not in any way indicate whether or not IRC § 1022 was part of the Internal Revenue Code as amended and in effect on January 1, 2012. Rather, the Estate's use of those basis rules simply indicates that the repealed IRC § 1022 basis rules referenced in the Public Law Election were binding on the Estate at the federal level as off-code provisions under TRUIRJCA. In other words, merely electing (as the Estate did) to apply the basis rules of repealed IRC § 1022 is irrelevant to the question of whether IRC § 1022 was

part of the Internal Revenue Code of 1986 as of January 1, 2012. Similarly, the 1995 Opinion did not deem SEHIA § 1(a) to be "in effect for certain taxpayers" (as the Commission now asserts with regard to repealed IRC § 1022), just because those "certain taxpayers" took the IRC § 162(*l*) deduction on their federal returns.

e. <u>The Idaho Legislature did not Conform I.C. § 63-3004 to the I.C. § 63-3002 Declaration of Intent after the 1995 Opinion was Decided, Even Though it Lead to Different Reporting of Taxable Income at the Federal and State Levels.</u>

In the decade following the 1995 Opinion, the Legislature has made no alterations to I.C. § 63-3004(a) or (b) (other than its annual update to the Internal Revenue Code snapshot year). Thus, the Commission cannot fairly insist (and the Court cannot reasonably hold) that I.C. § 63-3002 expresses the Legislature's intent to incorporate provisions of federal tax law that were not codified into the Internal Revenue Code as of January 1 of the relevant tax year. *See D & M Country Estates Homeowners Ass'n v. Romriell*, 138 Idaho 160, 165 (2002) ("[C]ourts must construe a statute under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed."). At best, the Commission's arguments would merely create an ambiguity in the interpretation of I.C. § 63-3004, which must be resolved "as favorably as possible to the taxpayer and strictly against the taxing authority."). *J.R. Simplot Co., Inc. v. Idaho State Tax Commission*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Commission*, 92 Idaho 288, 291 (1968)).

f. <u>The Commission's Construction of I.C. § 63-3002 Conflicts with the Plain Language of I.C. § 63-3004.</u>

Finally, in its unending reliance on I.C. § 63-3002's Declaration of Intent, the Commission continues to ignore the Estate's reminders that the Legislature is not to be presumed to adopt statutes that conflict with one another, or render other statutes superfluous. *See Grand Canyon Dories v. Idaho State Tax Commission*, 124 Idaho 1, 4 (1993) ("[A]ll statutes relating to the same subject are to be compared, and so far as still in force brought into harmony by

interpretation."); *Sweitzer v. Dean*, 118 Idaho 568, 572 (1990) (Holding that a statute is to be interpreted "in a manner that will not nullify it."). As the Estate has already explained, construing I.C. § 63-3004(a) to incorporate federal tax provisions that are not part of the Internal Revenue Code on January 1 of the particular calendar year would contradict I.C. § 63-3004(b) which (as the 1995 Opinion held) only incorporates federal effective dates enacted prior to that date, and would nullify I.C. § 63-3004(b) since federal effective dates necessarily come into being on the date specified. For these reasons, repealed IRC § 1022 was not "in effect" as part of the Internal Revenue Code with respect to the Estate for purposes of the Idaho Act.

3. Incorporation of Repealed IRC § 1022 into the Idaho Act would be Unconstitutional because Repealed IRC § 1022 is not Set Forth and Published in Full Length in the Idaho Code, in any Idaho Legislative Act, or Anywhere in the Internal Revenue Code as of January 1, 2012.

The Commission apparently misunderstands the application of Article III, § 18 of the Idaho Constitution to the laws at issue in this case when it states that "amendments to an Idaho Act must be published at full length in the bill itself." (Defendant's Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment, p. 10.) The Commission disregards the Estate's constitutional concerns as irrelevant, despite having cited no enactment by the Idaho Legislature (including the incorporated Title 26 of the United States Code) which sets forth and publishes at full length the full text of either the Public Law Election or repealed IRC § 1022. Accordingly, the Commission has failed to address the Estate's arguments that any incorporation of these off-code provisions into the Idaho Act is void as an unconstitutional amendatory reference.

4. Conclusion.

Based on the foregoing, Plaintiff, the Estate of Zippora Stahl, respectfully requests this Court GRANT its Motion for Reconsideration and Amendment of Judgment.

DATED this 1st day of October, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden, Idaho Attorney General	X	US Mail
Phil N. Skinner		Overnight Mail
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Boise, ID 83722-0410	X	david.young@tax.idaho.gov

Victoria L. Fuhriman

Tab "A"

PL 111-312, December 17, 2010, 124 Stat 3296

UNITED STATES PUBLIC LAWS

111th Congress - Second Session

Convening January 05, 2010

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 111–312 [HR 4853]
December 17, 2010
TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

An Act To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

<< 26 USCA § 1 NOTE >>

(a) SHORT TITLE.--This Act may be cited as the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010".

(b) AMENDMENT OF 1986 CODE.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.--The table of contents for this Act is as follows:

Tab "A"

<< 26 USCA § 121 NOTE >>

(e) EFFECTIVE DATE.--Except as otherwise provided in this section, the amendments made by this section shall apply to estates of decedents dying, and transfers made, after December 31, 2009.

SEC. 302. MODIFICATIONS TO ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES.

(a) MODIFICATIONS TO ESTATE TAX.--

<< 26 USCA § 2010 >>

(1) $5,000,000 APPLICABLE EXCLUSION AMOUNT--Subsection (c) of section 2010 is amended to read as follows:

"(c) APPLICABLE CREDIT AMOUNT.--

"(1) IN GENERAL.--For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

"(2) APPLICABLE EXCLUSION AMOUNT.--

"(A) IN GENERAL.--For purposes of this subsection, the applicable exclusion amount is $5,000,000.

"(B) INFLATION ADJUSTMENT.--In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

<< 26 USCA § 2001 >>

(2) MAXIMUM ESTATE TAX RATE EQUAL TO 35 PERCENT.--Subsection (c) of section 2001 is amended--

(A) by striking "Over $500,000" and all that follows in the table contained in paragraph (1) and inserting the following:

"Over $500,000	$155,800, plus 35 percent of the excess of such amount over $500,000.",

(B) by striking "(1) IN GENERAL.--", and

(C) by striking paragraph (2).

(b) MODIFICATIONS TO GIFT TAX.--

(1) RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.--

<< 26 USCA § 2505 >>

(A) IN GENERAL.--Paragraph (1) of section 2505(a), after the application of section 301(b), is amended by striking "(determined as if the applicable exclusion amount were $1,000,000)".

<< 26 USCA § 2505 NOTE >>

(B) EFFECTIVE DATE.--The amendment made by this paragraph shall apply to gifts made after December 31, 2010.

<< 26 USCA § 2502 >>

<< 26 USCA § 2502 NOTE >>

(2) MODIFICATION OF GIFT TAX RATE.--On and after January 1, 2011, subsection (a) of section 2502 is amended to read as such subsection would read if section 511(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

*3302

<< 26 USCA § 2641 NOTE >>

(c) MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX.--In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.

(d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN CREDIT RESULTING FROM DIFFERENT TAX RATES.--

(1) ESTATE TAX.--

<< 26 USCA § 2001 >>

(A) IN GENERAL.--Section 2001(b)(2) is amended by striking "if the provisions of subsection (c) (as in effect at the decedent's death)" and inserting "if the modifications described in subsection (g)".

<< 26 USCA § 2001 >>

(B) MODIFICATIONS.--Section 2001 is amended by adding at the end the following new subsection:

"(g) MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.--For purposes of applying subsection (b)(2) with respect to I or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute--

"(1) the tax imposed by chapter 12 with respect to such gifts, and

"(2) the credit allowed against such tax under section 2505, including in computing--

"(A) the applicable credit amount under section 2505(a)(1), and

"(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).".

<< 26 USCA § 2505 >>

(2) GIFT TAX.--Section 2505(a) is amended by adding at the end the following new flush sentence:

"For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.".

<< 26 USCA § 2511 >>

(e) CONFORMING AMENDMENT.--Section 2511 is amended by striking subsection (c).

<< 26 USCA § 2001 NOTE >>

(f) EFFECTIVE DATE.--Except as otherwise provided in this subsection, the amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

SEC. 303. APPLICABLE EXCLUSION AMOUNT INCREASED BY UNUSED EXCLUSION AMOUNT OF DECEASED SPOUSE.

<< 26 USCA § 2010 >>

(a) IN GENERAL.--Section 2010(c), as amended by section 302(a), is amended by striking paragraph (2) and inserting the following new paragraphs:

"(2) APPLICABLE EXCLUSION AMOUNT.--For purposes of this subsection, the applicable exclusion amount is the sum of--

"(A) the basic exclusion amount, and

"(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

<< 26 USCA § 2010 >>

"(3) BASIC EXCLUSION AMOUNT.--

"(A) IN GENERAL.--For purposes of this subsection, the basic exclusion amount is $5,000,000.

Tab "B"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Internal Revenue Service
~~Estate~~ & Gift Stop 824G
201 West Rivercenter Blvd
Covington, KY 41011

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delive

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

INTERNAL REVENUE SERVICE
RECEIVED
JAN 18 2012
SERVICE CENTER DIRECTOR
COVINGTON, KY
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Total Postage & Fees	$ $6.83

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CINCINNATI OFFICE WINDOW BOSS
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Internal Revenue Service
Estate & Gift Stop 824G
201 West Rivercenter Blvd
Covington, KY 41011

PS Form 3800, August 2006 ctions

Tab "B"

AHRENS DEANGELI

LAW GROUP

January 17, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Internal Revenue Service
Estate & Gift Stop 824G
201 West Rivercenter Boulevard
Covington, KY 41011

Re: Allocation of Increase in Basis for Property Acquired from a Decedent (Form 8939)
Estate of Zippora Pedersen Stahl
SSN: [redacted]

Dear Sir or Madam:

Enclosed please find the following tax return together with corresponding schedules, attachments and forms for the above-referenced estate:

- Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent; and
- Form 2848, Power of Attorney and Declaration of Representative

If you have any questions, please feel free to contact Nicholas S. Marshall or Edward D. Ahrens, who are listed on Form 2848.

Very truly yours,

Donna Baker Purdy

Donna Baker Purdy
Paralegal for Nicholas S. Marshall
DRB:drb

Enclosures

Copies to:
Kathleen M. Krucker (without enclosures)
Gary B. Genske (without enclosures)

Filing Instructions

Prepared for:	Prepared by:
Kathleen M. Krucker Estate of Zippora Pedersen Stahl 381 Bob Barton Road Jerome, ID 83338	Ahrens DeAngeli Law Group LLP P.O. Box 9500 Boise, ID 83707-9500

FORM 8939 ALLOCATION OF INCREASE IN BASIS

No payment is required.

The return should be signed and dated by the personal representative of the estate.

Mail on or before January 17, 2012 to:

Internal Revenue Service
Estate & Gift Stop 824G
201 W Rivercenter Blvd
Covington, KY 41011

000061
05-01-10

Form **8939**

Department of the Treasury
Internal Revenue Service

Allocation of Increase in Basis for Property Acquired From a Decedent

File separately. Do NOT file with Form 1040. See below for filing address.

To be filed for decedents dying after December 31, 2009, and before January 1, 2011.

OMB No. 1545-2203

2010

If this is an amended Form 8939, check here ▶ ☐ If filing this Form 8939 revokes a timely and otherwise valid section 1022 election, check here ▶ ☐

Part 1- Decedent and Executor

1a Decedent's first (given) name and middle initial (and maiden name, if any)	1b Decedent's last (family) name	2 Decedent's Social Security No.
Zippora Pedersen	Stahl	[redacted]

3 County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death	4 ☐ Check if decedent was a nonresident and was not a citizen of the U.S. See instructions. If checked, enter nationality (citizenship) N/A	5 Date of death
Jerome County, Idaho 83338		06/26/2010

6a Name of executor (see instructions)	6b Executor's address (number and street including apartment or suite number; city, town, or post office; state; and ZIP code) and phone number
Kathleen M. Krucker	381 Bob Barton Road Jerome, ID 83338
6c Executor's social security number (see instructions) [redacted]	Phone no. (208) 324-7904

7 Marital status of the decedent at time of death:

☐ Married

☒ Widow or widower - Name, SSN, and date of death of deceased spouse ▶ SSN: [redacted] DOD: 11/24/1973
Name: Vernon Ormond Christian Stahl

☐ Single

☐ Legally separated

☐ Divorced - Date divorce decree became final ▶

Part 2- Basis Allocation Computation

8a Surviving spouse's name	8b Spouse's social security number
None	

9 Individuals (other than the surviving spouse), trusts, estates, or other entities who acquired property from the estate (see instructions).

Name of individual, trust, estate, or other entity	Taxpayer identification number
Kathleen M. Krucker Zippora M. Stahl-Shults Genevieve L. Stahl-Menville	[redacted]

10	Built-in loss (see instructions)	10	2,193.
11	Capital loss carryforward (see instructions)	11	
12	Net operating loss carryforward (see instructions)	12	25,000.
12a	Add lines 10, 11, and 12 (see instructions)	12a	27,193.
12b	Enter $1,300,000 or $60,000 (see instructions)	12b	1,300,000.
12c	General Basis Increase. Add the amounts on line 12a and line 12b (see instructions)	12c	1,327,193.
13	Enter the total amount of General Basis Increase allocated on all Schedules A line 4B, column (e)(i) (see instructions)	13	1,327,193.
14	Enter the total amount of Spousal Property Basis Increase allocated on all Schedules A line 4B, column (e)(ii) (see instructions)	14	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I (executor) understand that if any other person files a Form 8939 or Form 706 (or Form 706-NA) with respect to this decedent or estate, that my name and address will be shared with such person, and I (executor) also hereby request the IRS share with me the name and address of any person who files a Form 8939 or Form 706 (or Form 706-NA) with respect to this decedent or estate. Declaration of preparer other than the executor is based on all information of which preparer has any knowledge.

Sign Here	Kathleen M Krucker Signature of executor	1-13-12 Date
	Signature of executor	Date

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	Nicholas S. Marshall, P.C.	Nicholas S Marshall	1/12/12		[redacted]
	Firm's name ▶ Ahrens DeAngeli Law Group LLP			Firm's EIN ▶ [redacted]	
	Firm's address ▶ P.O. Box 9500 Boise, ID 83707-9500			Phone no. (208) 639-7799	

Send Form 8939 (including accompanying schedules and statements) to: Internal Revenue Service, Estate & Gift Stop 824G, 201 W. Rivercenter Blvd., Covington, KY 41011

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, vs. IDAHO STATE TAX COMMISSION, Defendant.	Case No. CV-OC-2015-00106 ORDER FOR SUPPLEMENTAL BRIEFING

In a decision entered on July 31, 2015, the Court resolved this income-tax dispute in favor of Defendant Idaho State Tax Commission and against Plaintiff Estate of Zippora Stahl. Judgment was entered for the Tax Commission three weeks later.

On September 3, 2015, the Estate filed a timely motion to reconsider the decision and to amend the judgment. In an order entered the following week, the Court established a briefing schedule for the Estate's motion. The briefing was completed on October 1, 2015. The Court has reviewed the briefs in detail. Having done so, the Court concludes that supplemental briefing may be helpful to deciding the motion.

On page 2 its reply brief, the Estate renews an argument it had made on summary judgment but that didn't figure into the Court's decision. The argument is that by virtue of IDAPA 35.01.01.010.08 and 26 U.S.C. § 7701(a)(29), the term "Internal Revenue Code of 1986," as used in I.C. § 63-3004, means Title 26 of the United States Code. The premise of the Estate's

position in this litigation might be stated as follows: section 301(c) of the federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"), Public Law No. 111-312, isn't part of the "Internal Revenue Code of 1986," as that term is used in section 63-3004, and therefore isn't incorporated into the Idaho Income Tax Act. In light of the Estate's apparently correct argument about the meaning of that term as used in that statute, the premise of the Estate's position in this litigation might be more correctly stated as follows: TRUIRJCA § 301(c) isn't part of Title 26 of the United States Code.

The Court understands Title 26 of the United States Code, on one hand, and the Internal Revenue Code of 1986, on the other, to be technically distinct things, though both are comprised of identical sections. *See, e.g., O'Boyle v. United States*, 2007 WL 2113583, at *1 (S.D. Fla. July 23, 2007) ("[T]here is a difference between the individual positive law statute entitled the Internal Revenue Code of 1986 and Title 26 of the United States Code. The Internal Revenue Code of 1986 is a statute enacted into positive law by congress, while the United States Code, including Title 26, is a statutory compilation by subject of enacted statutes.") (citing 1 U.S.C. § 204(a) and the note that follows it). The Estate acknowledges TRUIRJCA § 301(c) was classified by the Office of Law Revision Counsel of the United States House of Representatives as a statutory note to 26 U.S.C. § 2001, which, of course, is a section of Title 26 of the United States Code. TRUIRJCA § 301(c) is not itself a section of Title 26, but, as a statutory note to a section, does it nevertheless constitute part of Title 26? The Office of Law Revision Counsel's website suggests the answer to this question is "yes." It says, among other things, that "[i]n addition to the sections themselves, the [United States] Code includes statutory provisions set out as statutory notes," that "[s]tatutory notes are provisions from laws that are placed in the Code so as to follow the text of a Code section," and that "[a] provision of a Federal statute is the law whether the provision

appears in the Code as section text or as a statutory note, and even when it does not appear in the Code at all." Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/detailed_guide.xhtml (last visited Oct. 13, 2015); Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, http://uscode.house.gov/about_classification.xhtml (last visited Oct. 13, 2015).

If the answer to the question posed above indeed is "yes, the next question is whether, having been part of Title 26 throughout the relevant tax year, TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act. The Court is unsure what might justify a negative response to this next question if, indeed, the answer to the first question is "yes." In other words, the Court is unsure what might justify a conclusion that the Idaho Income Tax Act evinces a legislative intent to incorporate Title 26's sections but not its statutory notes.

The parties are given leave to address the two questions posed in this order in simultaneous supplemental briefs. Supplemental briefs are not mandatory, but a party wishing to file one must do so by October 30, 2015. Briefs may not exceed 10 pages in length.

IT IS SO ORDERED.

Dated this 13th day of October, 2015.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of October, 2015, I mailed (served) a true and correct copy of the within instrument to:

Nicholas S. Marshall
Maximilian Held
AHRENS DEANGELI LAW GROUP LLP
250 S 5th St, Ste 660
PO Box 9500
Boise, ID 83707-9500

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Electronic Mail
( ) Facsimile

Lawrence G. Wasden
Phil Skinner
David Young
IDAHO ATTORNEY GENERAL'S OFFICE
PO Box 83720
Boise, ID 83702-0010

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Electronic Mail
( ) Facsimile

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL

DAVID B. YOUNG [ISB # 6380]
PHIL N SKINNER [ISB #8527]
DEPUTY ATTORNEYS GENERAL
STATE OF IDAHO
P. O. BOX 36
BOISE, ID 83722-0410
FACSIMILE: (208) 334-7530

Attorneys for the Idaho State Tax Commission

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, -vs- IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CVOC1500106 **DEFENDANT'S SUPPLEMENTAL BRIEF OPPOSING PLAINTIFF'S MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT**

COMES NOW, Defendant, Idaho State Tax Commission (Commission), by and through its counsel, pursuant to this Court's Order for Supplemental Briefing, dated October 13, 2015, and submits its supplemental brief in opposition to the motion for reconsideration and for amendment of judgment by Plaintiff, the Estate of Zippora Stahl (Estate).

I.

INTRODUCTION

The Court has presented two questions:

1. TRUIRJCA § 301(c) is not itself a section of Title 26, but, as a statutory note to a section, does it nevertheless constitute part of Title 26?

2. If the answer to question one is "yes," then, having been part of Title 26 throughout the relevant tax year, was TRUIRJCA § 301(c) incorporated into the Idaho Income Tax Act?

The answer to both of these questions is "yes." The Court's Decision and Judgment should stand.

II.

ANALYSIS

A. TRUIRJCA § 301(c), as a statutory note, does constitute part of Title 26.

As this Court noted in its Order for Supplemental Briefing, the Estate acknowledges that "TRUIRJCA § 301(c) was classified by the Office of Law Revision Counsel of the United States House of Representatives as a statutory note to 26 U.S.C. § 2001." Order at 2. The Office of Law Revision Counsel is charged with developing and keeping current "an official and positive codification of the laws of the United States." 2 U.S.C.A. § 285a. Its functions include "to classify newly enacted provisions of law to their proper positions in the Code where the titles involved have not yet been enacted into positive law." 2 U.S.C.A. § 285b.

In the admitted portion of the Affidavit of Law Revision Counsel, Ralph V. Seep, he explained, "'Section 301(c)' enacted freestanding provisions that this Office classified as a

statutory note under section 2001 of Title 26 of the United States Code." Affidavit of Ralph V. Seep at 2.

The Office of Law Revision Counsel explains how these freestanding provisions are included in the Code:

> Once a bill is passed by both the U.S. House of Representatives and Senate, it is enrolled and prepared for presentment to the President. As soon as the enrolled bill becomes available, attorneys in the OLRC carefully read through it. The attorneys look for both amendments to laws already in the Code and for any non-amendatory provisions (referred to as "freestanding provisions") that are general and permanent. If a provision amends a section or statutory note in the Code, it is classified to that section or note. For freestanding provisions, the classification decision is more challenging.
>
> While some laws that may affect the Code are small and cover only one subject, many laws are large, cover a multitude of subjects, and contain a complicated mixture of amendatory and freestanding provisions, general and special provisions, and permanent and temporary provisions. In addition, even a single freestanding provision that is general and permanent can relate simultaneously to a number of different chapters and titles in the Code. Since freestanding provisions are not typically drafted with the Code in mind, it is primarily the responsibility of the OLRC's classifying attorneys to determine whether and how they will be classified to the Code.
>
> * * * * *
>
> Once it has been determined that a freestanding provision should be included in the Code, the decision on where to place it depends not only on the subject matter but also on various technical considerations. If a number of related freestanding provisions in a public law are tied together with definitions, mutual cross references, or a common effective date and comprise the entire law or a distinct title of the law, those provisions would likely be classified as a new chapter at the end of the (non-positive) Code title that relates most closely to the subject matter of the provisions. If only one or two freestanding provisions from a law are to be classified to the Code, they would likely be placed somewhere within an existing chapter. The Code title being affected also dictates the placement of the freestanding provisions. Non-positive law titles can have new sections, chapters, and statutory notes added to them editorially. Positive law titles, however, can have new sections and chapters added to them only by Congress by way of a direct amendment. Therefore, a freestanding provision that belongs within a positive law title based on its subject matter will be classified as a statutory note under a section of that title.

> Statutory notes are provisions from laws that are placed in the Code so as to follow the text of a Code section (or, occasionally, to precede the first section of a chapter). A statutory note can consist of as much as an entire law or as little as a clause. While the decision to classify a freestanding provision as a section or a statutory note is an editorial judgment, there are certain types of provisions that are normally classified as notes in both positive and non-positive law titles, such as effective dates, short titles, savings, and statutory construction. Statutory notes also include provisions that are somewhat less than general or less than permanent, but still relate to existing Code sections, such as those requiring studies and reports, implementation of regulations, or the establishment of a task force. For more information about statutory notes, see the Detailed Guide to the Code.
>
> It is important to understand that whether or not a provision is classified to the Code, and if classified, whether or not it is set out as a section or a statutory note, does not in any way affect the provision's meaning or validity.

Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Oct. 28, 2015) (emphasis added).

As explained above, when it comes to freestanding provisions, the Office of Law Revision Counsel's classifying attorneys have the job of determining "whether and how they will be classified to the Code." In this case, the decision was made to include TRUIRJCA section 301(c) in the code as a statutory note to Title 26, section 2001. *See* Affidavit of Ralph V. Seep, at 2.

The Office of Law Revision Counsel website further addresses the validity of freestanding provisions that have been included in the Code as a statutory note:

> E. Validity of notes
> A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note, and even when it does not appear in the Code at all. The fact that a provision is set out as a note is merely the result of an editorial decision and has no effect on its meaning or validity.

Office of Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, http://uscode.house.gov/detailed_guide.xhtml#statutory (last visited Oct. 28, 2015) (emphasis added).

TRUIRJCA section 301(c) was included in Title 26 of the United States Code as a statutory note. And, therefore, it constitutes part of Title 26 of the Code.

B. As a statutory note, TRUIRJCA § 301(c), was part of Title 26 throughout the relevant tax year and therefore was incorporated into the Idaho Income Tax Act.

The question in this case is whether TRUIRJCA section 301(c) is incorporated in the Idaho Income Tax Act's calculation of Idaho taxable income.

Idaho Taxable Income "means taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter." Idaho Code § 63-3011C (emphasis added).

"The term 'taxable income' means federal taxable income as determined under the Internal Revenue Code." Idaho Code § 63-3011B (emphasis added).

"The term 'Internal Revenue Code' means the Internal Revenue Code of 1986 of the United States..." Idaho Code § 63-3004 (emphasis added).

If a term is not defined in the Idaho Income Tax Act (i.e., chapter 30 of Idaho Code title 63) or in the Tax Commission's administrative rules, then that term "shall have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms." IDAPA 35.01.01.010.

The term "Internal Revenue Code of 1986" is not defined in the Idaho Income Tax Act or in the Commission's administrative rules. Thus, we turn to section 7701 of the Internal Revenue Code, which is set forth in 26 USC § 7701. Subsection 29, of 26 USC 7701 provides, "The term 'Internal Revenue Code of 1986' means this title." "This title" means Title 26 of the United States Code.

As explained earlier in this brief, TRUIRJCA section 301(c) was included in title 26 of the United States Code. Therefore, as a part of the Title 26 of the United States Code, TRUIRJCA section 301(c) is incorporated into the Idaho Income Tax Act

IV.

CONCLUSION

TRUIRJCA section 301(c) was included in Title 26 of the United States Code as a statutory note. And, therefore, did constitute part of Title 26 of the Code. As a part of Title 26 of the United States Code, TRUIRJCA section 301(c) is incorporated into the Idaho Income Tax Act.

This conclusion is consistent with the Idaho Legislature's explicitly stated intent that a taxpayer's "taxable income" reported to Idaho should be the *identical* amount that the taxpayer reported to the Internal Revenue Service. *See* Idaho Code § 63-3002.

It follows that this Court's decision in this case was correct. This Court should deny the Estate's Motion for Reconsideration and Amendment of Judgment.

DATED this 30th day of October 2015.

IDAHO STATE TAX COMMISSION

PHIL N SKINNER
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 30TH day of October 2015, I have served a true and correct copy of the within and foregoing Tax Commission's DEFENDANT'S SUPPLEMENTAL BRIEF OPPOSING PLAINTIFF'S MOTION FOR RECONSIDERATION AND FOR AMENDMENT OF JUDGMENT upon Petitioner indicated below:

NICHOLAS S MARSHALL
MAXIMILIAN HELD
AHRENS DEANGELI LAW GROUP LLP
PO BOX 9500
BOISE ID 83707-9500

X U.S. Mail, Postage Prepaid
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (Fax)
_____ Email

PHIL N SKINNER
DEPUTY ATTORNEY GENERAL

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Attorneys for Plaintiff

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-2015-00106 PLAINTIFF'S MEMORANDUM IN RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING

Plaintiff, the Estate of Zippora Stahl, Deceased (the "Estate"), by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, hereby submits this Memorandum in response to this Court's Order for Supplemental Briefing ("Briefing Order") entered in the above-captioned matter on October 13, 2015.

In the Briefing Order, the Court noted generally that the Idaho Income Tax Act, Idaho Code § 63-3001 *et seq.* (the "Idaho Act") incorporates the "Internal Revenue Code of 1986" and that by virtue of IDAPA 35.01.01.0180 and 26 U.S.C. § 7701(a)(29) the term "Internal Revenue Code of 1986," as used in the Idaho Act means Title 26 of the United States Code ("Title 26"). Accordingly, the Court requested briefing on the issues of (1) whether or not the notes following a section of Title 26 constitute "part of Title 26"; and (2) whether § 301(c) of TRUIRJCA, Pub. L. No. 111-312 ("TRUIRJCA § 301(c)") is incorporated into the Idaho Act by virtue of the Office of the Law Revision

ORB

Counsel's ("OLRC") reference to TRUIRJCA § 301(c) in the notes section following 26 U.S.C § 2001.[1] Both issues are briefed below.

I. STAUTORY NOTES SET OUT IN THE SPACE FOLLOWING ACTUAL SECTIONS OF TITLE 26 ARE NOT PART OF TITLE 26.

A. Section 7701(a)(29)'s Definition of Internal Revenue Code of 1986 Does Not Include OLRC Note Sections

Section 7701(a)(29) defines the "Internal Revenue Code of 1986" as "this title" (i.e., Title 26 of the United States Code). If the phrase "this title" in § 7701(a)(29) is construed to incorporate the OLRC's notes, many of which are editorial in nature[2], into the Internal Revenue Code of 1986, then § 7701(a)(29) must also be construed as delegating to the OLRC the authority to amend Title 26 as well as its identical counterpart, the Internal Revenue Code of 1986. Any such construction would be legally erroneous.

Section 7701(a)(2) does not delegate any such authority to the OLRC which does not have authority to *amend* the law comprising the titles of the United States Code or its underlying statutes. First, the clear language of § 7701(a)(2) contains no indication that Congress intended to delegate to the OLRC the authority to amend Title 26 or the Internal Revenue Code of 1986. A delegation of legislative authority is effective only if "Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of the delegated authority." *Mistretta v. United States*, 488 U.S. 361, 372-73 (1989). None of those elements are present within Section 7701(a)(2), a self-titled "definition" section. Finally, there is no legal authority indicating that the purpose of § 7701(a)(29) is to delegate to the OLRC any authority to amend the provisions of Title 26 or the Internal Revenue Code of 1986. Rather, as discussed below, § 7701(a)(29) simply sets forth the well-established principle that provisions of Title 26 and the Internal Revenue Code of 1986 are identical.

B. Title 26 and the Internal Revenue Code of 1986 Are Identical and TRUIRJCA § 301(c) Is Not Part of Either Such Identical Code of Laws.

As discussed below, the Internal Revenue Code of 1986 is identical to Title 26. Additionally, the Internal Revenue Code of 1986 (1) is a positive law code of statutes that does not include TRUIRJCA § 301(c), and (2) can only be amended by Congress through the legislative process.

---

[1] Irrelevant to the issues at hand is whether TRUIRJCA § 301(c) is binding for the purpose of computing federal income tax. The Estate, once again, does not contest that TRUIRJCA § 301(c) is valid federal law even though it was never incorporated into the Idaho Act for the calculation of Idaho state taxable income.

[2] *See* discussion at I.B.3., *infra.*

Therefore, TRUIRJCA § 301(c) is not part of either the Internal Revenue Code of 1986 or Title 26.

1. The Provisions of Title 26 and the Internal Revenue Code of 1986 Are Identical.

Title 26 and the Internal Revenue Code of 1986 are one and the same. As mentioned on pages 16-17 of the Estate's Answering Brief, the note titled "Title 26, Internal Revenue Code" following 1 U.S. Code § 204 provides that "[t]he sections of Title 26, United States Code, ***are identical*** to the sections of the Internal Revenue Code." (Emphasis added). As noted above, the equivalency of the Internal Revenue Code of 1986 and Title 26 is also expressed in § 7701(a)(29) of the IRC which provides that the term "Internal Revenue Code of 1986" means "this title" (i.e., Title 26). Also reflective of this equivalency is Title 26's full title: "U.S. Code: Title 26 – Internal Revenue Code."

Federal Courts recognize that the Internal Revenue Code and Title 26 are identical. *Hibben v. United States*, 2009 WL 2633137, at *3 (E.D. Tenn. 2009), remarked that "the [Plaintiffs] can show no inconsistency between Title 26 of the United States Code and the identical underlying Statute at Large, the Internal Revenue Code of 1986, as amended." Likewise, *United States v. McLain* 597 F. Supp. 2d 987, 994 n. 6 (D. Minn. 2009) held that "while [Defendant] is technically correct in arguing that Title 26 is merely prima facie evidence of the law, the distinction is largely academic because the relevant sections of Title 26 are identical to the relevant sections of the Internal Revenue Code."

2. The Only Distinction Between Title 26 and the Internal Revenue Code of 1986 Is That the Internal Revenue Code of 1986 Is Positive Law While Title 26 Is Not.

As noted by the Court in the Briefing Order, the opinion in *O'Boyle v. United States*, 2007 WL 2113583 indicates that Title 26 and the Internal Revenue Code are technically "distinct." The sole distinction, however, is that the Internal Revenue Code of 1986 is a statute enacted into positive law by Congress while Title 26 is a compilation of the exact same statute not enacted as positive law. *Id.* at *1. The *O'Boyle* court further explained, "the Internal Revenue Code and Title 26 of the United States Code **are identical**, even though they are distinct." *Id.* (emphasis added). Other than the distinction of the Internal Revenue Code as positive law and Title 26 as non-positive law the two codes are indistinguishable. *See* the note titled "Title 26, Internal Revenue Code" following 1 U.S. Code § 204. In describing the Internal Revenue Code of 1986's relationship to Title 26, Professor Mary Whisner states as follows: "This is a little hard to wrap your head around. Title 26 is not positive law, but the Internal Revenue Code (***which is the same as 26 U.S.C.***) is positive law." Mary Whisner, *The United States Code, Prima Facie Evidence, and Positive Law*, 101 Law Libr. J. 545, 556 (2009)

(emphasis added).

3. Characterizing Statutory Notes As Part of Title 26 Would Render Title 26 Non-Identical To the Internal Revenue Code of 1986.

The Internal Revenue Code of 1986 only consists of the sections set forth in the Internal Revenue Act of 1954 as well as all amendments made to those Sections through the legislative process. *See* the note titled "Title 26, Internal Revenue Code" following 1 U.S. Code § 204 (citing § 2(a) of the Tax Reform Act of 1986, Pub. L. 99-514, 10 Stat. 2085). The original Internal Revenue Act of 1954, including all amendments thereto, is now defined as the Internal Revenue Code of 1986 and is comprised exclusively of "Sections." *See* Section 2 of Public Law 99-514 providing that "[t]he Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the 'Internal Revenue Code of 1986.'" (Emphasis added). No section of the Internal Revenue Code of 1986 is *passed by* Congress with an OLRC note section attached to it. Further, a section of the Internal Revenue of 1986 without OLRC's notes is fundamentally different from the same section with OLRC notes appended to it. Therefore, OLRC notes sections appended to the ends of Internal Revenue Code sections cannot be considered part of Title 26. Otherwise, the sections of Title 26 and the sections of the Internal Revenue Code of 1986 would not be identical as clearly provided by the authority cited above. Accordingly, statutory notes must be viewed as separate from the sections of Title 26 in order for Title 26 to remain identical to the Internal Revenue Code of 1986.

Consistent with these principles, the OLRC inserts into the United States Code a wide variety of its own "editorial notes," which contain additional information and guidance regarding a law's "source, derivation, history, references, translations, effectiveness and applicability, codification, defined terms, prospective amendments, and related matters."[3] Executive orders of the President of the United States are also included as notes in the United States Code. *See* note following 26 U.S.C. § 7801 (Ex. Ord. No. 13051: Order by President Clinton establishing Internal Revenue Service Management Board). By their very nature, such provisions cannot be considered as part of the codified provisions of Title 26 because their characterization as such would render Title 26 and the Internal Revenue Code non-identical. Further, considering such provisions as part

[3] *See* Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, http://uscode.house.gov/detailed_guide.xhtml#editorial.

of the codified law of Title 26, would entail provisions other than Congressional enactments being improperly added to Title 26. *See* discussion at I.B.4., *infra.*

Given the foregoing authority, it is not possible to properly interpret uncodified OLRC notes, such as TRUIRJCA § 301(c), as being part of Title 26. Accordingly, it is not surprising that the Commission *conceded* in its Motion to Strike the Affidavit of Ralph V. Seep that "the Estate does not actually need an affidavit to tell the Court that the text of Public Law 111-312 [sic] ***is not technically contained within that volume of U.S. Code Title 26***." (Memorandum in Support of Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep), p. 2.) (emphasis added); *see also* (Memorandum in Support of Tax Commission's Motion for Summary Judgment, p. 13) (conceding that "the verbiage of the election in question was not incorporated within the four corners of the Internal Revenue Code.").

4. The Internal Revenue Code of 1986 Is Positive Law That Can Only Be Amended By Congress.

In connection with the foregoing, it is critical to remember that the Internal Revenue Code of 1986 may only be amended by Congress through the legislative process. *See generally* U.S. Const., Art. I, § 1. As the Court quoted in its Order for Supplemental Briefing, "[t]he Internal Revenue Code of 1986 is a statute enacted into positive law ***by congress*** . . . ." *O'Boyle v. United States*, 2007 WL 2113583, at *1 (S.D. Fla. 2007) (emphasis added). Moreover, *Young v. IRS*, 596 F. Supp. 141, 149 (N.D. Ind. 1984), noted that Congress enacted the Internal Revenue Code as "a separate Code . . . which was then denominated as Title 26 by the House Judiciary Committee." More specifically, Congress first enacted the Internal Revenue Code of 1954 in the form of a separate code in Pub. L. No. 83-591 on August 16, 1954. *See* the note titled "Title 26, Internal Revenue Code" following 1 U.S. Code § 204. On October 22, 1986, Section 2 of Public Law 99-514 provided that "[t]he Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the 'Internal Revenue Code of 1986.'" (Emphasis added). Therefore, the term "Internal Revenue Code of 1986, as amended" refers only to the Internal Revenue Title of 1954 as such title has been specifically amended by Congress (including the 1986 name change to "Internal Revenue Code of 1986"). In other words, Congress created the code of statutes defined as the "Internal Revenue Code of 1986" and only Congress has authority to amend the sections comprising the Internal Revenue Code of

1986. Since Congress has not authorized the OLRC to amend the Internal Revenue Code of 1986, and since Title 26 is identical to the Internal Revenue Code, the OLRC's notes that follow sections of Title 26, many of which are "editorial notes" that were not enacted by Congress, cannot be part of Title 26.[4] The OLRC, itself, acknowledged in an email that "only Congress can amend the Internal Revenue Code." (Affidavit of Tyler Rice in Response to Order for Supplemental Briefing, ¶2, **Appendix "A"**.) Given that Congress clearly has retained the exclusive authority to amend the code of laws defined as the "Internal Revenue Code of 1986," the OLRC certainly is not provided with the authority to amend Title 26, which is identical to the Internal Revenue Code of 1986, by appending the text of TRUIRJCA § 301(c) to IRC § 2001.

5. Congress Did Not Amend The Internal Revenue Code to Include TRUIRJCA § 301(c).

Also fundamental to this analysis is the fact that Congress deliberately did not amend the Internal Revenue Code of 1986 to include TRUIRJCA § 301(c). As the Estate has previously explained at pages 18-21 of its Answering Brief in Objection to Tax Commission's Motion for Summary Judgment ("Answering Brief"), when Congress amends the Internal Revenue Code, it does so by its stated means in language that clearly and meticulously notates wherever an Internal Revenue Code provision is "amended by adding" or "is amended by inserting" or "is amended by striking" the specified language of a section of the Internal Revenue Code. As also explained at pages 18-21 of the Answering Brief in connection with the discussion of *United States v. Tourtellot*, 483 B.R. 72, 84-85 (M.D. N.C. 2012), Congress did not use its "stated means" to amend the Internal Revenue Code to include TRUIRJCA § 301(c).

6. Federal Case Law Does Not Recognize Statutory Notes As Being Codified As Part of United States Code Titles.

Consistent with the foregoing, Federal Courts do not regard statutory notes as being codified as part of United States Code Titles. As the Estate previously discussed on page 22 of its Answering Brief, enacted provisions of federal tax laws that do not amend or become part of the Internal Revenue

[4] *See* discussion, *supra*, at I.B.3. In addition, Congress has not delegated its authority to supplement the Internal Revenue Code of 1986 (and, hence, Title 26) to the President. The fact that the OLRC's notes following the sections of Title 26 also contain presidential Executive Orders further reveals that the notes sections cannot be, and were not intended to be part of Title 26.

Code are added to the notes section following the section of the Internal Revenue Code to which they relate. Such provisions are not properly considered as part of the Internal Revenue Code or as part of any Title to the United States Code. *See, e.g., Ntakirutimana v. Reno*, 184 F.3d 419, 433 (5th Cir. 1999) (DeMoss, J., dissenting) (noting that § 1342 of the National Defense Authorization Act, Pub. L. No. 104-106 "does not purport to be an amendment to the existing statutes on extradition and it was not codified [but rather] appears in the *United States Code Annotated* only as a "statutory note"); *In re Olga Coal Co.*, 159 F.3d 62, 67 (2d Cir. 1998) (citing as "not codified" a statutory note to 26 U.S.C. § 9701 that quotes "Congressional Findings and Declaration of Policy" articulated in Pub. L. No. 102-486). In addition, *Schwier v. Cox*, 340 F.3d 1284, 1288 (11th Cir. 2003), acknowledged as "never codified" a portion of a public law that was placed in a "Historical and Statutory Note" to 5 U.S.C. § 522a.

7. General OLRC Website Statements Do Not Suggest that TRUIRJCA §301(c) Is Part of Title 26.

The Court's Order for Supplemental Briefing quotes statements from the OLRC's website that allegedly support the Court's theory that TRUIRJCA § 301(c) was codified as part of Title 26. However, none of these quotes from the OLRC website suggest that TRUIRJCA § 301(c) is a part of Title 26. Rather, those quoted statements are general in nature and do not address the specific issues of this case. In particular, the OLRC statements do not purport to address issues regarding the Internal Revenue Code of 1986's peculiar status as positive law enacted by Congress and the fact that Congress chose not to amend the Internal Revenue Code of 1986 with TRUIRJCA § 301(c) or include it as part of the IRC.

In addition, it is important to note that other OLRC statements suggest TRUIRJCA § 301(c) is not part of Title 26 U.S.C. The OLRC website makes clear that "statutory notes are provisions of law that are set out as notes under a Code section rather than as a Code section"[5] which suggests that items such as TRUIRJCA § 301(c) are not part of Title 26. Critically, the OLRC website also explains that "[s]tatutory notes also include provisions that are somewhat less than general or less than permanent,

[5] *See* Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, http://uscode.house.gov/detailed_guide.xhtml#statutory; Office of the Law Revisions Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml.

but still relate to existing Code sections."[6] In connection with that statement, we note that 1 U.S.C. § 204(a) provides that the U.S. Code Titles are comprised only of U.S. laws that are "general and permanent in their nature." Section 301(c) is neither general nor permanent law and therefore is not properly part of Title 26.[7] Thus, it should come as no surprise that the OLRC, itself, explained in prior correspondence that TRUIRJCA § 301(c) is not part of Title 26 because (1) "the sections of Title 26 of the United States Code are identical to those of the Internal Revenue Code of 1986"; (2) "only Congress can amend the Internal Revenue Code"; (3) TRUIRJCA § 301(c) "is not an amendment to, or part of, the Internal Revenue Code of 1986."[8] (Aff. of Rice, ¶2, **Appendix "A"**.)

II. THE IDAHO ACT ONLY INCORPORATES THE INTERNAL REVENUE CODE OF 1986 AND CORRESPONDING IDENTICAL SECTIONS SET FORTH IN TITLE 26.

A. The Idaho Legislature Intended to Incorporate Only the Identical Codified Provisions of the Internal Revenue Code and Title 26.

The Idaho Act and IDAPA refer exclusively to the Internal Revenue Code of 1986 or the "Federal Internal Revenue Code." *See* I.C. § 63-3002 (legislative declaration of intent to make the Idaho Act "identical to provisions of the Federal Internal Revenue Code"); I.C. § 63-3011B (defining "taxable income" as "federal taxable income as determined under the Internal Revenue Code"); I.C. § 63-3004 (defining "Internal Revenue Code" as "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012"); IDAPA 35.01.01.010.08 ("[t]erms not otherwise defined in the [Idaho Act or the Administrative Rules] shall have the same meaning as is assigned to them by the Internal Revenue Code."). Further, the

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[6] Office of the Law Revisions Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (emphasis added).

[7] The OLRC's determination that TRUIRJCA § 301(c) is not general and permanent is correct. Section 301(c) is not general because it applies only to those finite number of taxpayers dying in 2010 who make the TRUIRJCA § 301(c) election. Section 301(c) is not permanent because it does not apply to the estate of any person who was alive on or after January 1, 2011.

[8] Mr. Seep also explained these concepts in his Affidavit filed on June 26, 2015, which the Court excluded from the record on July 21, 2015 when it granted the Commission's Motion to Strike. As noted above, the Commission relied on the fact that TRUIRJCA § 301(c) is not part of Title 26 as support for its Motion to Strike Mr. Seep's Affidavit. (Memorandum in Support of Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep), p. 2.) Fundamental fairness requires that the Commission be held to its prior pleadings in which it conceded that TRUIRJCA § 301(c) is not contained within Title 26. At the very least, the Commission's representations to that effect in support of its Motion to Strike warrant this Court's revival of the stricken portions of Mr. Seep's Affidavit, which also make clear that TRUIRJCA § 301(c) is not part of Title 26.

Idaho Code and IDAPA make no reference at all to either Title 26 alone or Title 26 as augmented by OLRC's notes. Accordingly, the clearly indicated intent of the Legislature is to incorporate into the Idaho Act only the sections of the Internal Revenue Code of 1986 and their identical counterparts as codified in Title 26 U.S.C. This interpretation is confirmed by Idaho Courts which treat the sections of the Internal Revenue Code and Title 26 identically and interchangeably.[9]

B. Any Ambiguity Must be Construed in Favor of the Taxpayer.

Even if one assumes, *arguendo*, that the phrase "this title" utilized in § 7701(a)(29) can be reasonably interpreted to include the OLRC notes, it would only mean that two plausible interpretations exist as to which body of federal tax law is incorporated into the Idaho Act by § 63-3004's definition of "Internal Revenue Code of 1986." The first is the Estate's interpretation that I.C. § 63-3004 incorporates only the *sections* of Title 26 and not the OLRC notes, which is consistent with the great weight of authority establishing the Internal Revenue Code of 1986 and Title 26 as identical bodies of law. The second option is the far less plausible interpretation which expands I.C. § 63-3004's definition of "Internal Revenue Code of 1986" to include off-code provisions set forth by the OLRC in its notes and characterizes Title 26 and the Internal Revenue Code of 1986 as non-identical. Idaho precedent dictates that the Estate's interpretation must prevail because tax statutes "must be construed as favorably as possible to the taxpayer and strictly against the taxing authority." *J.R. Simplot Co., Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 852 (1991) (quoting *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 291 (1968). Moreover, holding that the Legislature intended to incorporate more than the sections of Title 26 would negate the canon of statutory construction described at pages 12-13 of the Estate's Memorandum In Support of Motion For Partial Summary Judgment ("Estate's Memorandum") establishing that where "a statute refers specifically to another statute by title or section number, there is no reason to think its drafters meant to incorporate more than the provision specifically referred to." Further, as set forth at pages 12-13 of the Estate's Memorandum, this Court

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[9] *Compare, e.g., Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 796 (2006) (citing 26 U.S.C. § 460 alongside "Section 460 of the federal Internal Revenue Code"); *Albertson's, Inc. v. State*, 106 Idaho 810, 817 (1984) (citing "Internal Revenue Code, 26 U.S.C. § 701); *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 575 (Ct. App. 1986) (citing 26 U.S.C. § 61); *Houston v. Idaho state Tax Comm'n*, 126 Idaho 718, 720 (1995) (citing to IRC § 280A); *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 849 (2010) (citing 26 U.S.C. § 66(c)) *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 389 (1996) (citing IRC § 63(a)); *Bogner v. State Dept. of Rev. and Tax'n*, 107 Idaho 854, 859 (1984) (Donaldson, C.J., concurring) (citing IRC § 164). It is also noteworthy that no Idaho case law treats statutory notes as part of Title 26 and/or the Internal Revenue Code.

must also presume that the Legislature enacted I.C. § 63-3004 with full knowledge of the authorities cited above establishing that sections of Title 26 are considered identical to the Internal Revenue Code of 1986 and do not contain off-code provisions such as TRUIRJCA § 301(c). *D & M Country Estates Homeowners Ass'n v. Romriell*, 138 Idaho 160, 165 (2002). As noted in the Estate's Memorandum at pages 13-14, the Colorado Legislature incorporated both the Internal Revenue Code of 1986, which a statutory footnote defines as "26 U.S.C.A. § et seq.," as well as "other provisions of the laws of the United States relating to federal income taxes." *See* Colorado Revised Statutes Annotated § 39-22-103. But for Colorado's reference to "*other provisions of the laws of the United States relating to federal income taxes*," off-code provisions set forth in OLRC notes would not have been incorporated into Colorado's income tax regime. As noted in the Estate's Memorandum at pages 14-15, the California Revenue and Taxation Code incorporates into its income tax regime the "Internal Revenue Code of 1986" which it defines as "Title 26 of the United States Code" and then goes on to also incorporate "*uncodified provisions that relate to provisions of the Internal Revenue Code.*" *See* California Revenue and Tax Code §§ 17024.5(a)(1) and 17024.5(a)(1)(2)(A). Like Colorado, therefore, California recognizes that off-code provisions such as those set forth in OLRC notes are not part of Title 26 and therefore explicitly incorporated such provisions its income tax regime.

CONCLUSION

Based on the foregoing, Plaintiff, the Estate of Zippora Stahl, respectfully requests this Court GRANT its Motion for Reconsideration and for Amendment of Judgment.

DATED this 30th day of October, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden, Idaho Attorney General	X	US Mail
Phil N. Skinner		Overnight Mail
David B. Young		Hand Delivery
Deputy Attorneys General	X	Facsimile No. 208-334-7844
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CVOC15-00106 AFFIDAVIT OF TYLER RICE IN RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING

TYLER RICE, being first duly sworn upon oath, deposes and says as follows:

1. I am an attorney with Ahrens DeAngeli Law Group, LLP, the counsel of record for the Estate of Zippora Stahl, deceased, I am over the age of 18 and have personal knowledge of the matters stated herein.

2. Attached hereto as **Appendix "A"** is a true and correct copy of email correspondence that I received from Mr. Ralph V. Seep, the Law Revision Counsel of the U.S. House of Representatives.

Further the affiant sayeth not.

DATED this 28th day of October, 2015.

Tyler Rice, ISBN 8864

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of October, 2015 before me, a Notary Public, Tyler Rice personally appeared, 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 last above written.

(SEAL) CARLIE KAY BUDD NOTARY PUBLIC STATE OF IDAHO

Notary Public, State of Idaho
My Commission Expires July 26, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden, Idaho Attorney General	X	US Mail
Phil N. Skinner		Overnight Mail
David B. Young		Hand Delivery
Deputy Attorneys General	X	Facsimile No. 208-334-7844
State of Idaho		Electronic Mail
P.O. Box 36	X	phil.skinner@tax.idaho.gov
Boise, ID 83722-0410	X	david.young@tax.idaho.gov

Victoria Fuhriman

Appendix "A"

Tyler Rice

From: uscwebmail <uscwebmail@mail.house.gov>
Sent: Wednesday, August 20, 2014 11:39 AM
To: Tyler Rice
Subject: RE: P.L. 111-312 Section 301(c)

Mr. Rice:

The Internal Revenue Code of 1986 is positive law. Any law enacted by Congress is positive law. When referring to titles of the United States Code, positive law has a narrower meaning. It means one law enacted by Congress as a title of the United States Code. This is explained on our website at: http://uscode.house.gov/codification/legislation.shtml. The Internal Revenue Code of 1986 is restated as Title 26 of the United States Code but is not a positive law title of the United States Code. However, the sections of Title 26 of the United States Code are identical to those of the Internal Revenue Code of 1986. You are correct that only Congress can amend the Internal Revenue Code.

Congress enacted the Internal Revenue Code of 1954 as a Code by the act of Aug. 16, 1954, ch. 736, 68A Stat. 3. Congress later revised and redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986 by Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2095.

Pub. L. 111-312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300, is not an amendment to, or part of, the Internal Revenue Code of 1986. It is a freestanding provision in Pub. L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. Our Office determines whether to include in the United States Code provisions that do not amend an existing law. We decided to place §301(c) in the United States Code as a statutory note under 26 USC 2001. Whether a provision is classified to the United States Code and, if classified, whether it is set out as a section or a statutory note does not affect the provision's meaning or validity.

Ralph V. Seep
Law Revision Counsel
U.S. House of Representatives

From: Tyler Rice [TRice@adlawgroup.com]
Sent: Wednesday, August 13, 2014 6:56 PM
To: uscode
Cc: Nicholas Marshall; David Wilson
Subject: P.L. 111-312 Section 301(c)

Good Afternoon,

As I recently discussed with Ray Kaselonis, I am writing to the Office of the Law Revision Counsel in hopes of having some questions answered. My understanding is that the Internal Revenue Code of 1986, as amended ("IRC"), is "positive" law, meaning only Congress, by way of a direct amendment, can amend any section, chapter or other provision of the IRC. The term "Internal Revenue Code of 1986 of the United States" first appears in Public Law 99-514, dated October 22, 1986, which states that "[t]he Internal Revenue Title enacted August 16, 1954, as heretofore, hereby or hereafter amended, may be cited as the 'Internal Revenue Code of 1986.'" The Internal Revenue Title enacted August 16, 1954 was contained in Public Law 591 – Chapter 736, which set forth an "Internal Revenue Title" containing subtitles A through G and §§ 1 through 8023. Thus, the term "Internal Revenue Code of 1986, as amended" refers only to the Title enacted August 16, 1954, as amended by each Public Law passed by Congress since that time.

Questions:

- Is the above analysis correct?
- Does Public Law 111-312, title III, § 301(c), Dec. 17, 2010, 124 Stat. 3300 amend any section, chapter or other provision of the IRC?

- Is Public Law 111-312, title III, § 301(c), Dec. 17, 2010, 124 Stat. 3300, part of the IRC?

Thank you for your assistance. If you have any questions, please do not hesitate to call or email.
Tyler Rice

Tyler Rice
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,

Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,

Defendant.

Case No. CV-OC-2015-00106

MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT

In a decision entered on July 31, 2015, the Court resolved this income-tax dispute in favor of Defendant Idaho State Tax Commission and against Plaintiff Estate of Zippora Stahl. Judgment was entered for the Tax Commission three weeks later.

On September 3, 2015, the Estate filed a timely motion to reconsider the decision and to amend the judgment. The Court set a briefing schedule for the Estate's motion. The order setting the briefing schedule stated that, once the briefing were complete, the Court would determine, in an exercise of its discretion under I.R.C.P. 7(b)(3)(D), whether to hold oral argument.

The briefing was complete on October 1, 2015. The Court reviewed the briefs and determined that supplemental briefs addressing two specific questions might be helpful to deciding the motion. Consequently, on October 13, 2015, the Court entered an order allowing supplemental briefs addressing those two questions to be filed by October 30, 2015.

The supplemental briefs were timely filed. The Court has reviewed them. Having done so, the Court concludes, in its discretion, that oral argument would not be helpful to deciding the Estate's motion to reconsider. The briefing is thorough. The Court understands the arguments. Accordingly, the Court deems the motion under advisement as of the completion of briefing on October 30, and now proceeds to decide it on the briefs.

ANALYSIS

During 2012, the Estate sold highly appreciated real property in Chino, California. Its 2012 federal income tax return reported a taxable gain on the sale of nearly $15 million, calculated by subtracting its "modified carryover basis" in the property from the sale proceeds. The Estate's original 2012 Idaho income tax return did the same.

Later, however, the Estate amended only its Idaho return, contending that, although its federal taxable gain was calculated correctly for federal purposes, the Idaho Income Tax Act, I.C. §§ 63-3001 *et seq.*, permitted recalculating its federal taxable gain for Idaho purposes according to a different, more favorable calculation method. Specifically, the Estate contended its federal taxable gain could be recalculated for Idaho purposes by subtracting a "stepped-up basis" in the Chino property from the sale proceeds, resulting in a taxable gain of only about $300,000. Thus, the Estate's position is that the Idaho Income Tax Act allowed it to use a different method for determining its "basis" in the property—and, by extension, its taxable gain on the sale of the property—than the method required by federal law.

The Estate's position, however, is based on an errant legal premise: that the Idaho Income Tax Act directs it to disregard the particular federal statute that drove the calculation of the federal taxable gain it reported on its 2012 federal tax return.

A. When a taxpayer may adjust its federal taxable income in calculating its Idaho taxable income, the Idaho Income Tax Act specifically says so.

The Idaho Income Tax Act operates on the well-established principle that "Idaho taxable income is the same as federal taxable income," except when I.C. § 63-3022 directs the taxpayer to adjust its federal taxable income in calculating its Idaho taxable income. *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996) (emphasis added). According to the Idaho Supreme Court, "I.C. § 63-3002 indicates that this [principle] was the intent of the legislature." *Id.* It stood on solid statutory ground in ascribing that intent to the legislature. Section 63-3002 expressly declares as follows:

> It is the intent of the legislature . . . insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, . . . basis and other pertinent provisions . . . , resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived . . . . All of the foregoing is subject to modifications in Idaho law . . . .

I.C. § 63-3002 (emphasis added).

Though section 63-3022 has been amended many times since *Potlatch* was decided nearly twenty years ago, it retains the same function it had then: specifying the adjustments to federal taxable income that are to be made in calculating Idaho taxable income. Now, it does so in two ways. First, section 63-3022's own text directly provides for some adjustments, and, second, its text identifies the other sections of the Idaho Income Tax Act (specifically, I.C. §§ 63-3022A through 63-3022R) that provide for other adjustments. I.C. § 63-3022 ("The additions and

subtractions set forth in this section, and in sections 63-3022A through 63-3022R, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income.").

Nowhere else in the Idaho Income Tax Act are adjustments to federal taxable income permitted. Consequently, no other adjustments are permissible. The Idaho Income Tax Act's definition of the term "Idaho taxable income" demonstrates as much. That term means federal taxable income "as modified pursuant to the Idaho adjustments specifically provided in [the Idaho Income Tax Act]." I.C. § 63-3011C (emphasis added). Because the adjustments provided for by section 63-3022 (along with the sections it references) are the only adjustments to federal taxable income "specifically provided" in the Idaho Income Tax Act, no others are allowed.

B. The Court assumes, without deciding, the Estate is correct in arguing that provisions of federal law not part of Title 26 of the United States Code are disregarded in calculating federal taxable income for purposes of the Idaho Income Tax Act.

The Estate concedes that neither section 63-3022 itself, nor any of the sections it references, directs the Estate to adjust its federal taxable income as it did in its amended 2012 Idaho tax return. The authority the Estate claims to find in the Idaho Income Tax Act for making that adjustment is much more latent.

The Estate's theory begins with noting that its taxable gain on the sale of the Chino property, as reported on its 2012 federal tax return, was calculated according to Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"), Public Law 111-312. From that starting point, the Estate's theory depends on two legal propositions. The first is that provisions of federal law not part of Title 26 of the United States Code but that bear on calculating the taxable income a taxpayer reports on its federal tax return—the Estate calls these "off-code" provisions—are disregarded in calculating the taxpayer's

federal taxable income for purposes of the Idaho Income Tax Act. The second is that TRUIRJCA § 301(c) isn't part of Title 26. The balance of this decision's section B is devoted to explaining the Estate's argument on the first proposition—an argument the Court accepts as correct for argument's sake, despite being skeptical that it accords with legislative intent. The second proposition is reserved for discussion in this decision's section C.

According to the Estate, "off-code" provisions are disregarded in calculating federal taxable income for Idaho purposes because they aren't incorporated into the Idaho Income Tax Act. This is shown, the Estate says, by the interplay among the definitions of four terms used in the Idaho Income Tax Act: (i) "taxable income"; (ii) "Internal Revenue Code"; (iii) "Internal Revenue Code of 1986"; and (iv) "Idaho taxable income."

First, the Idaho Income Tax Act defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." I.C. § 63-3011B (emphasis added).

Second, it defines "Internal Revenue Code," for purposes of the 2012 tax year, as "the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012." I.C. § 63-3004 (2012 version) (emphasis added).

Third, when a term is not defined in the Idaho Income Tax Act, a Tax Commission regulation, IDAPA 35.01.01.010.08, adopts any definition of the term that is set forth in the Internal Revenue Code, particularly in Internal Revenue Code § 7701 (*i.e.*, 26 U.S.C. § 7701). Section 7701 defines "Internal Revenue Code of 1986" as "this title," meaning Title 26 of the United States Code. 26 U.S.C. § 7701(a)(29) (emphasis added).

Taking these three definitions together, the Estate argues that, for purposes of the Idaho Income Tax Act, a taxpayer's federal taxable income must be calculated solely according to the

provisions of Title 26 of the United States Code. So, any "off-code" provision that bears on calculating a taxpayer's federal taxable income for federal income tax purposes must be disregarded in calculating its federal taxable income for Idaho income tax purposes. Consequently, according to the Estate, a taxpayer's federal taxable income can be different for Idaho purposes than for federal purposes.

The fourth and final definition that comes into play is an already-recited one, under which "Idaho taxable income" means federal taxable income, as modified by the Idaho adjustments "specifically provided" in the Idaho Income Tax Act. I.C. § 63-3011C. The Idaho Income Tax Act need not, however, contain a "specifically provided" adjustment under the Estate's argument, as the first three definitions call for recalculating its federal taxable income, even though none of the adjustments to federal taxable income provided for by section 63-3022 (and the other sections it references) is applicable. Thus, the Estate has, it thinks, an end-run around the *Potlatch* rule that Idaho taxable income equals federal taxable income, except to the extent section 63-3022 specifically provides for adjusting federal taxable income in calculating Idaho taxable income.

The Court can follow and appreciate how the Estate arrives at this conclusion. But the Court is not convinced the Idaho legislature actually intended a statutory scheme in which a taxpayer's federal taxable income for purposes of its federal tax return may differ from its federal taxable income for purposes of its Idaho tax return. The Court suspects the Estate finds in these definitions a limiting principle the Idaho legislature didn't intend. Likelier that not, it strikes the Court, the legislature didn't recognize the potential for so-called "off-code" provisions to play a role in calculating federal taxable income for purposes of federal law. The legislature probably didn't make a conscious decision that "off-code" provisions should be disregarded for purposes of

the Idaho Income Tax Act, so that a taxpayer's federal taxable income might be different for purposes of the Idaho Income Tax Act than it is on the taxpayer's federal income tax return. Instead, the legislature probably has continued since *Potlatch* to have precisely the intent the Idaho Supreme Court ascribed to it in that case: that "Idaho taxable income is the same as federal taxable income," except to the extent I.C. § 63-3022 directs adjusting federal taxable income in calculating Idaho taxable income. *Potlatch*, 128 Idaho at 389, 913 P.2d at 1159.

The Court might have ruled against the Estate for this reason. But, in ruling against the Estate, the Court didn't reach the issue of whether "off-code" provisions are to be disregarded, as the Estate says. The Court still need not, and does not, reach that issue in deciding the Estate's motion to reconsider. For reasons explained in this decision's next section, TRUIRJCA § 301(c), under which the Estate calculated its federal taxable income, though not part of the section text of any section of Title 26, is part of Title 26 as a statutory note to 26 U.S.C. § 2001. Consequently, the Estate's argument that "off-code" provisions are disregarded in calculating a taxpayer's federal taxable income for purposes of the Idaho Income Tax Act, even if accepted as true, isn't outcome-determinative, as the Estate's federal taxable income wasn't calculated according to a provision of federal law of a sort that can be disregarded as an "off-code" provision. Hence, the Estate wasn't entitled to recalculate its federal taxable income for purposes of the Idaho Income Tax Act.

C. TRUIRJCA § 301(c) is part of Title 26.

TRUIRJCA § 301(c) provides for what is called the "Section 1022 Election." By making the Section 1022 Election, an estate of a decedent dying during 2010, as Zippora Stahl did, could avoid paying estate tax. In return, though, such an estate would be required to pay income tax on

sales of appreciated property under "repealed" Section 1022 of the Internal Revenue Code's unfavorable "modified carryover basis" regime, instead of being able to claim the more favorable "stepped-up basis" that otherwise is allowed by Section 1014(a)(1) of the Internal Revenue Code. The Estate made the Section 1022 Election. Consequently, for federal income tax purposes, it calculated its taxable gain on its 2012 sale of the Chino property under "repealed" Section 1022. Contending TRUIRJA § 301(c) is an "off-code" provision of federal law that wasn't incorporated into the Idaho Income Tax Act, for purposes of the Idaho Income Tax Act the Estate recalculated its federal taxable gain on that sale under Section 1014(a)(1). Consequently, as already noted, it reported a dramatically smaller taxable gain on its amended 2012 Idaho tax return than it had reported on its 2012 federal tax return (and on its original 2012 Idaho return).

In briefing their cross-motions for summary judgment, the parties framed their dispute as whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year. In deciding the motions, the Court agreed with the Estate's characterization of TRUIRJCA § 301(c) as an "off-code" provision of federal law, by which the Court meant a provision that isn't part of the Internal Revenue Code of 1986 (Mem. Decision & Order 10), which, as discussed below, is distinct from Title 26 of the United States Code. The Court did not, however, reach the issue of whether TRUIRJCA § 301(c) is part of Title 26, nor of whether it was incorporated into the Idaho Income Tax Act. The Court concluded the litigation could be resolved by determining, instead, whether "repealed" Section 1022 was incorporated into the Idaho Income Tax Act for the 2012 tax year. The Court determined that "repealed" Section 1022 was so incorporated, meaning the Estate wrongly contending its federal taxable gain had been calculated under an "off-code"

provision of federal law, negating the premise of its argument for allowing it to recalculate that gain for purposes of the Idaho Income Tax Act.

The initial series of briefs on the Estate's motion to reconsider sensibly focused on whether the Court's analysis in that regard was correct. One of the Estate's arguments, however, caused the Court to see in a new light the issue the parties had originally asked the Court to decide but the Court had seen as unnecessary to decide: whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year. The Court therefore asked for supplemental briefing on two questions related to that issue: (i) whether TRUIRJCA § 301(c), as a statutory note to a section of Title 26, is part of Title 26; and (ii) if so, whether it was incorporated into the Idaho Income Tax Act. Having reviewed the parties' supplemental briefs, the Court concludes it should have decided whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year, as the parties originally asked. The Court proceeds to decide that issue now, as it furnishes an independent ground for determining that the Tax Commission is entitled to summary judgment. Consequently, no further discussion of the conceptually distinct basis on which the Court initially resolved the case is either necessary or productive.

To decide whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year, the Court first must determine whether it was part of Title 26 on January 1, 2012. Indeed, as explained in this decision's section B, the Estate itself argues—and correctly so—that Title 26, as it existed on January 1, 2012, was incorporated into the Idaho Income Tax Act for the 2012 tax year.

In that regard, the Estate introduced uncontested evidence that TRUIRJCA § 301(c), enacted by Congress in 2010, was classified by the Office of Law Revision Counsel of the United

States House of Representatives as a "statutory note" under 26 U.S.C. § 2001 (Seep Aff. ¶ 3), not as part of the section text of section 2001 or any other section of Title 26. The Office of Law Revision Counsel's "principal purpose [is] to develop and keep current an official and positive codification of the laws of the United States," 2 U.S.C. § 285a. In other words, it codifies federal laws once Congress enacts them. Is a statutory note classified by the Office of Law Revision Counsel to a section of Title 26 part of Title 26? Yes, it is. The reasons for this conclusion follow. First, though, the Court notes that Exhibit A to this decision is a printout of the official online version of 26 U.S.C. § 2001 maintained by the Office of Law Revision Counsel. As the sixth page of the printout shows, TRUIRJCA § 301(c) is part of it (albeit not as section text). The printout may help a reader visualize and understand what a "statutory note" is, a subject the Court will address next, as it explains more fully what the Office of Law Revision Counsel does.

The Office of Law Revision Counsel's principal purpose, as already noted, is codifying federal laws. *See* 2 U.S.C. § 285a. In executing that duty, the Office of Law Revision Counsel must "classify newly enacted provisions of law to their proper positions in the [United States] Code where the titles involved have not yet been enacted into positive law," 2 U.S.C. § 285b(4) (emphasis added), as is true of Title 26. *See* 1 U.S.C. § 204 note. "Classification is the process of deciding which laws are included in the [United States] Code and where they are to be placed." Office of Law Revision Counsel, *Frequently Asked Questions and Glossary*, Glossary http://uscode.house.gov/faq.xhtml (last visited Nov. 9, 2015). After deciding which laws to classify to the United States Code and where to place them, the Office of Law Revision Counsel communicates its work by "prepar[ing] and publish[ing] periodically a new edition of the United States Code." 2 U.S.C. § 285b(3).

Not all new laws are classified to the United States Code as code sections. Some new laws instead are classified to the United States Code as statutory notes, and some are not even classified to the United States Code at all. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). If a new law is a "freestanding provision"—*i.e.*, a provision that doesn't amend a law already in the United States Code—the Office of Law Revision Counsel first decides whether to classify it to the United States Code at all. *Id.* TRUIRJCA § 301(c) is a freestanding provision (Seep Aff. ¶ 3), so that decision had to be made about it.

If the Office of Law Revision Counsel decides to classify a freestanding provision to the United States Code, the next decision it must make is where to place the provision in the United States Code. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). One aspect of that decision is determining whether the provision should be classified as a code section or, instead, as a statutory note. *Id.* "[T]he decision to classify a freestanding provision as a section or a statutory note is an editorial judgment." *Id.* That decision "does not in any way affect the provision's meaning or validity." *Id.* In other words, the laws Congress enacts are effective, regardless of where (or even whether) they are placed in the United States Code by the Office of Law Revision Counsel. TRUIRJCA § 301(c), as already noted, was classified as a statutory note to 26 U.S.C. § 2001. (Seep Aff. ¶ 3.)

"A statutory note is a provision of law set out as a note," usually following a code section. Office of Law Revision Counsel, *Frequently Asked Questions and Glossary*, Glossary, http://uscode.house.gov/faq.xhtml (last visited Nov. 9, 2015) (emphasis added); *see also* Office of

the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, § IV, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015) ("Statutory notes are provisions of law that are set out as notes under a Code section rather than as a [United States] Code section."). Statutory notes are distinguished from editorial notes, in that the former, as just explained, are provisions of law enacted by Congress, whereas the latter "are prepared by the [Office of Law Revision Counsel] to assist users of the [United States] Code." Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, §§ IV-V, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015). Thus, a statutory note is (i) a provision of law enacted by Congress, (ii) that was classified to the United States Code by the Office of Law Revision Counsel, and (iii) that appears in the United States Code following a code section rather than as section text.

TRUIRJCA § 301(c) is indisputably all of these things, as the Estate's own evidence shows. The unstricken portion of paragraph 3 of the Affidavit of Ralph V. Seep, the Law Revision Counsel himself, establishes that TRUIRJCA § 301(c) is a provision of law classified to the United States Code as a statutory note to 26 U.S.C. § 2001.[1] Moreover, the Estate has twice placed in the record an e-mail from Seep to the Estate's counsel, in which Seep states that the

[1] The Estate asks the Court to reverse its ruling striking the balance of paragraph 3, contending the stricken portions help its argument that TRUIRJCA § 301(c) isn't part of Title 26. (Pl.'s Suppl. Br. 8 n. 8.) The Court declines to reverse that ruling. The stricken portions lack foundation and aren't admissible for that reason. That said, after many hours of studying the issues this action presents, the Court has been able to discern the probable reasoning behind Seep's assertions in the stricken portions of paragraph 3, and the Court doesn't disagree with them. They do not, however, support the proposition that a statutory note to a section of Title 26 isn't part of Title 26. Seep neither said nor implied that. Thus, even if the Court were to reverse its ruling striking part of paragraph 3, this action's outcome would not change.

Office of Law Revision Counsel "decided to place §301(c) in the United States Code as a statutory note under 26 USC 2001." (Marshall Aff. Ex. A; Rice Aff. Ex. A (emphasis added).) There is no reason to think Seep used the phrase "in the United States Code" carelessly or nonliterally. Indeed, the Office of Law Revision Counsel's website repeatedly characterizes statutory notes as appearing or being included in the United States Code:

- "[T]he Code includes statutory provisions set out as statutory notes . . . ." Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, § I, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015) (emphasis added).
- "Whether a provision in an act . . . appears in the Code as a section or as a statutory note is an editorial decision based on a number of factors." *Id.* § IV (emphasis added).
- "A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note . . . ." *Id.* § IV(E) (emphasis added).
- "Statutory notes are provisions from laws that are placed in the Code so as to follow the text of a Code section." Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015) (emphasis added).
- "If a provision amends a . . . statutory note in the Code, it is classified to that . . . note." *Id.* (emphasis added).
- "A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note . . . ." *Id.* (emphasis added).

The conclusion cannot be avoided that, as a statutory note to 26 U.S.C. § 2001, TRUIRJCA § 301(c) is part of Title 26 of the United States Code. The Estate, though, tries in several ways to avoid the unavoidable. The problems with its arguments are explained below.

First, the Estate argues that considering statutory notes to be part of Title 26 would amount to sanctioning an unauthorized delegation to the Office of Law Revision Counsel of congressional authority to amend Title 26. (Pl.'s Suppl. Br. 2.) This is so, the Estate argues, because editorial

notes—which, as discussed above, are not provisions of law—also would have to be considered part of Title 26. It is not clear why statutory notes and editorial notes must stand on equal footing in this regard. Whether editorial notes are part of the United States Code, in the same way that statutory notes are, is beyond the scope of this case, which involves only a statutory note. Since the statutory note at issue, like all statutory notes, is an enactment of Congress, giving it effect was Congress's will. Considering it to be part of Title 26 doesn't mean Congress impermissibly delegated to the Office of Law Revision Counsel its authority to amend Title 26. To the contrary, Congress expressly and permissibly delegated to the Office of Law Revision Counsel the task of "classify[ing] newly enacted provisions of law to their proper positions in the Code where"—as here—"the titles involved have not yet been enacted into positive law." 2 U.S.C. § 285b(4).

Second, the Estate argues that considering statutory notes to be part of Title 26 would create differences between Title 26, on one hand, and the separately enacted, positive-law code called the "Internal Revenue Code of 1986,"[2] on the other hand, as there are no statutory notes to the latter. (Pl.'s Suppl. Br. 2-6.) The sameness of Title 26 and the Internal Revenue Code of

[2] "[T]here is a difference between the individual positive law statute entitled the Internal Revenue Code of 1986 and Title 26 of the United States Code. The Internal Revenue Code of 1986 is a statute enacted into positive law by congress, while the United States Code, including Title 26, is a statutory compilation by subject of enacted statutes." *O'Boyle v. United States*, 2007 WL 2113583, at *1 (S.D. Fla. July 23, 2007) (citing 1 U.S.C. § 204(a) and the note that follows it). In other words, the Internal Revenue Code of 1986 is a "separate code" from Title 26, though their section text is identical. 1 U.S.C. § 204 note. This presumably accounts for Seep's statements, which seem conflicting at first, that TRUIRJCA § 301(c) isn't part of the Internal Revenue Code of 1986 (Seep Aff. ¶ 3 (stricken portion); Marshall Aff. Ex. A; Rice Aff. Ex. A) but was placed "in the United States Code" as a statutory note to a section of Title 26. (Marshall Aff. Ex. A; Rice Aff. Ex. A.) TRUIRJCA § 301(c) isn't part of the individual statute enacted by Congress and called the "Internal Revenue Code of 1986," but it nevertheless is part of the compilation of statutes the Office of Law Revision Counsel has placed in Title 26, some as statutory notes.

1986, however, is limited to their section text. *See* 1 U.S.C. § 204 note ("The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code."); *United States v. McLain*, 597 F. Supp.2d 987, 994 n. 6 (D. Minn. 2009) ("[T]he relevant sections of Title 26 are identical to the relevant sections of the Internal Revenue Code."). Their section text is no less identical if statutory notes are considered to be part of Title 26; statutory notes are not part of, and do not constitute amendments to, section text.[3] Statutory notes do, however, constitute valid and binding federal law, enacted by Congress and placed in the United States Code (sometimes in Title 26) by the Office of Law Revision Counsel. The Estate doesn't explain why it's the slightest bit problematic to the administration of federal tax laws to recognize that Title 26 contains some law—*i.e.*, statutory notes—that isn't also part of the Internal Revenue Code of 1986.

Third, the Estate argues that statutory notes aren't part of the United States Code because some federal cases characterize statutory notes as uncodified. (Pl.'s Suppl. Br. 6-7.) The Estate identifies three federal cases characterizing a statutory note in that way. The Estate doesn't mention, however, that numerous federal cases characterize statutory notes as codified. A comprehensive listing won't be attempted here. Scratching the surface, the Court lists some of the circuit-level cases that do so—*Lezama-Garcia v. Holder*, 666 F.3d 518, 521 n. 1 (9th Cir. 2011), *Benoit v. United States Dep't of Agric.*, 608 F.3d 17, 19 (D.C. Cir. 2010), *Aldana v. Del*

[3] As already noted, TRUIRJCA § 301(c) was determined by the Office of Law Revision Counsel to be a "freestanding" provision (Seep Aff. ¶ 3), meaning it isn't an amendment to any section of the United States Code. Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). Had it amended section text, it wouldn't have been classified as a statutory note. *Id.* ("If a provision amends a section . . . in the Code, it is classified to that section . . . .").

Monte Fresh Produce N.A., Inc., 578 F.3d 1283, 1287 (11th Cir. 2009), *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 979 (9th Cir. 2007), *United States v. Hristov*, 396 F.3d 1044, 1045 (9th Cir. 2005), and *Conyers v. Merit Sys. Prot. Bd.*, 388 F.3d 1380, 1382 n. 2 (Fed. Cir. 2004)—as well as a lower-court case that characterized a statutory note to a section of Title 26 (26 U.S.C. § 62) as "codified," *Dacosta v. United States*, 82 Fed. Cl. 549, 553 n. 6 (2008). The weight of authority is that statutory notes are indeed codified (though not as section text). And, again, their force and effect is equal to that of section text. The Court holds that a federal statute becomes codified when it is placed in the United States Code, as either section text or a statutory note, by the Office of Law Revision Counsel, in executing its statutory duty to "classify newly enacted provisions of law to their proper positions in the Code." 2 U.S.C. § 285b(4).

Fourth, and finally, the Estate suggests that some statements on the Office of Law Revision Counsel's website, unlike those the Court sets out above, support the conclusion that statutory notes aren't part of the United States Code. (Pl.'s Suppl. Br. 7-8.) The two particular statements the Estate recites, though, don't support its conclusion. One of them merely distinguishes statutory notes from section text, in that statutory notes are set out under a code section; it doesn't say or imply that, being set out under a code section, a statutory note isn't part of the United States Code. The second statement explains that some statutory notes reflect provisions of law that are somewhat less than general or permanent in nature but nevertheless are classified to a code section because of their relationship to the code section. The Estate deems TRUIRJCA § 301(c) neither general nor permanent in nature. On that basis, it suggests the Office of Law Revision Counsel has violated 1 U.S.C. § 204(a), which calls for codifying laws that general and permanent in nature, if TRUIRJCA § 301(c) is considered part of Title 26. In

deciding whether to classify a freestanding provision of law to the United States Code, however, the Office of Law Revision Counsel must make a sometimes-difficult judgment call about whether it belongs there. Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). The judgment call it made here was to classify TRUIRJCA § 301(c) as a statutory note to 26 U.S.C. § 2001. The Office of Law Revision Counsel's decision in that regard settles whether TRUIRJCA § 301(c) is part of Title 26. It is part of Title 26.

D. TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act.

Because TRUIRJCA § 301(c) is part of Title 26, the question becomes whether it was incorporated into the Idaho Income Tax Act for the 2012 tax year. This is a straightforward question whose answer isn't in any doubt.

In this decision's section B, the Court analyzed a chain of interrelated definitions of relevant terms, concluding, exactly as the Estate argues, that any provision of Title 26 that was in effect on January 1, 2012, was incorporated into the Idaho Income Tax Act for the 2012 tax year. TRUIRJCA § 301(c) was enacted as part of Public Law No. 111-312 on December 17, 2010. The record doesn't reveal the precise date on which the Office of Law Revision Counsel placed it in Title 26 as a statutory note to 26 U.S.C. § 2001. The Estate doesn't argue, though, that the classification process was still ongoing after January 1, 2012. In fact, the Office of Law Revision Counsel's website indicates that TRUIRJCA § 301(c) had been classified to the United States Code as a statutory note to 26 U.S.C. § 2001 not later than January 7, 2011. Office of Law Revision Counsel, *United States Code Table of Classifications for Public Laws, 111th Congress, 2nd Session*, http://uscode.house.gov/classification/tbl111pl_2nd.htm (last visited Nov. 9, 2015).

Accordingly, I.C. § 63-3004's conditions for incorporation are satisfied: TRUIRJCA § 301(c) is part of Title 26, and it was in effect on January 1, 2012.

Beyond disagreeing with the premise that TRUIRJCA § 301(c) is part of Title 26, the Estate offers three arguments against the conclusion that it was validly incorporated into the Idaho Income Tax Act for the 2012 tax year.

The first argument is that if I.C. § 63-3004 is deemed to incorporate into the Idaho Income Tax Act not only Title 26 itself, but also amendments to Title 26 that aren't set forth in Title 26, that would amount to an "amendatory reference" in violation of article III, § 18 of the Idaho Constitution. (E.g., Pl.'s Mem. Supp. Mot. Partial Summ amendments to Title 26 that aren't set forth in Title 26. J. 20-22; Pl.'s Mem. Supp. Mot. Reconsideration 18-19.) But, as the Court already has held, TRUIRJCA § 301(c) is part of Title 26 itself. That fact seemingly negates the premise of the Estate's "amendatory reference" argument. Regardless, article III, § 18 prohibits only amending statutes without setting forth in full the statute being amended. *Noble v. Bragaw*, 12 Idaho 265, 273, 95 P. 803, 904 (1906). No amendment to section 63-3004 itself is argued to suffer from any such infirmity. Moreover, TRUIRJCA § 301(c) is a freestanding provision of federal law (Seep Aff. ¶ 3), meaning it doesn't amend any provision of the United States Code. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). Section 63-3004's incorporation into the Idaho Income Tax Act of a non-amendatory provision of federal law doesn't violate Idaho's constitutional ban on "amendatory references."

The Estate's second argument is that the Idaho legislature supposedly didn't intend to incorporate statutory notes. (Pl.'s Suppl. Br. 8-9.) The basis for that argument is that the Idaho

Income Tax Act repeatedly uses the term "Internal Revenue Code" or "Internal Revenue Code of 1986" rather than the term "Title 26," thus supposedly evincing the intent to incorporate only Title 26's section text, and not its statutory notes, inasmuch as the statutory notes aren't part of the separately enacted, positive-law statute called "the Internal Revenue Code of 1986." It is true that the Idaho Income Tax Act itself doesn't use the term "Title 26." But, by virtue of IDAPA 35.01.01.010.08, which the Tax Commission adopted in 1997, the term "Internal Revenue Code of 1986" means Title 26 for purposes of the Idaho Income Tax Act. The Tax Commission was authorized by the legislature to adopt that regulation. I.C. § 63-3039(1), (2). Moreover, the legislature, which can be presumed to know about the regulation and has unquestioned power to override it, hasn't exercised that power. The Estate identifies no grounds on which the Court could decline to enforce the regulation, the effect of which, as already explained, is to define the term "Internal Revenue Code of 1986" in a way that encompasses statutory notes to Title 26.

Finally, the Estate's third argument is the incorporation of Title 26's statutory notes is insufficiently clear, bringing to bear the rule that, in the event of ambiguity, tax statutes must be construed in the taxpayer's favor. (Pl.'s Suppl. Br. 9-10.) But that rule of construction applies only when the statute's meaning is "so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning." *See, e.g., Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 182, 59 P.3d 983, 987 (2002). That isn't the case here. The Court agrees with the Estate's own argument that Title 26 was incorporated into the Idaho Income Tax Act by virtue of a series of unambiguous statutory and regulatory definitions of terms. There is no hint of a limiter in any of those definitions, to the effect that only the text of Title 26's sections, and not its statutory notes, are incorporated. The Court lacks authority to create an otherwise-nonexistent limiter.

Moreover, that the incorporation of Title 26's statutory notes could have been accomplished through different, more express statutory or regulatory language isn't significant; the chosen language plainly accomplishes incorporation of Title 26's statutory notes by not excluding portions of Title 26 from the incorporation.

Here, it makes sense to return to the analysis in this decision's section A, in which the Court identified, as the Idaho Supreme Court had done in *Potlatch*, a clear legislative mandate that federal taxable income and Idaho taxable income be equal, except as "specifically provided" in the Idaho Income Tax Act. I.C. § 63-3004. The Idaho Income Tax Act doesn't "specifically provide[ ]" for disregarding some parts of Title 26, so that a taxpayer can recalculate its federal taxable income, for purposes of the Idaho Income Tax Act, from the taxable income the taxpayer was required by Title 26, in its entirety, to report on its federal tax return. Instead, the Idaho Income Tax Act requires that a taxpayer's baseline taxable income—meaning, its taxable income before considering the adjustments to federal taxable income provided for by section 63-3022 (and the sections it references)—be the same as the federal taxable income Title 26 required the taxpayer to report on its federal tax return.

The Estate's arguments to the contrary are clever. They reflect highly skilled lawyering. But they ask the Court to recognize a loophole—one that just isn't there—in the well-established rule equating Idaho taxable income with federal taxable income, except as specifically provided in the Idaho Income Tax Act. The Estate's arguments don't carry the day for that reason.

The Court's prior grant of summary judgment to the Tax Commission stands, supplemented by the independent ground for summary judgment set forth in this decision.

Accordingly,

IT IS ORDERED that the Estate's motion to reconsider and to amend the judgment is denied.

Dated this 16th day of November, 2015.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November 2015, I mailed (served) a true and correct copy of the within instrument to:

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CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

EXHIBIT A

26 USC 2001: Imposition and rate of tax
Text contains those laws in effect on November 4, 2015

From Title 26-INTERNAL REVENUE CODE
Subtitle B-Estate and Gift Taxes
CHAPTER 11-ESTATE TAX
Subchapter A-Estates of Citizens or Residents
PART I-TAX IMPOSED

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§2001. Imposition and rate of tax

(a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of-

(1) a tentative tax computed under subsection (c) on the sum of-

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000	$8,200 plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.

Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000	$345,800, plus 40 percent of the excess of such amount over $1,000,000.

(d) Adjustment for gift tax paid by spouse

For purposes of subsection (b)(2), if-

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035

If-

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) Valuation of gifts

(1) In general

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on-

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if-

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) Modifications to gift tax payable to reflect different tax rates

For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute-

(1) the tax imposed by chapter 12 with respect to such gifts, and

(2) the credit allowed against such tax under section 2505, including in computing-

(A) the applicable credit amount under section 2505(a)(1), and

(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

(Aug. 16, 1954, ch. 736, 68A St[redacted]373; Pub. L. 94–455, title XX, §2001(a)([redacted] Oct. 4, 1976, 90 Stat. 1846 ; Pub. L. 95–600, title VII, §702(h)(1), Nov. 6, 1978, 92 Stat. 2930 ; Pub. L. 97–34, title IV, §402(a)–(c), Aug. 13, 1981, 95 Stat. 300 ; Pub. L. 98–369, div. A, title I, §21(a), July 18, 1984, 98 Stat. 506 ; Pub. L. 100–203, title X, §10401(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–430 , 1330-431; Pub. L. 103–66, title XIII, §13208(a)–(b)(2), Aug. 10, 1993, 107 Stat. 469 ; Pub. L. 105–34, title V, §§501(a)(1)(D), 506(a), Aug. 5, 1997, 111 Stat. 845 , 855; Pub. L. 105–206, title VI, §6007(e)(2)(B), July 22, 1998, 112 Stat. 810 ; Pub. L. 105–277, div. J, title IV, §4003(c), Oct. 21, 1998, 112 Stat. 2681–909 ; Pub. L. 107–16, title V, §511(a)–(c), June 7, 2001, 115 Stat. 70 ; Pub. L. 111–312, title III, §302(a)(2), (d)(1), Dec. 17, 2010, 124 Stat. 3301 , 3302; Pub. L. 112–240, title I, §101(c)(1), Jan. 2, 2013, 126 Stat. 2317 .)

AMENDMENTS

2013-Subsec. (c). Pub. L. 112–240 substituted in table separate tentative tax rates for amounts over $500,000 but not over $750,000, over $750,000 but not over $1,000,000, and over $1,000,000, respectively, for single tentative tax rate for amounts over $500,000.

2010-Subsec. (b)(2). Pub. L. 111–312, §302(d)(1)(A), substituted "if the modifications described in subsection (g)" for "if the provisions of subsection (c) (as in effect at the decedent's death)".

Subsec. (c). Pub. L. 111–312, §302(a)(2), struck out par. (1) designation and heading preceding table, substituted in table a single tentative tax rate for any amount over $500,000 for separate tentative tax rates for amounts ranging from over $500,000 to over $2,500,000, and struck out par. (2) which related to phasedown of maximum rate of tax.

Subsec. (g). Pub. L. 111–312, §302(d)(1)(B), added subsec. (g).

2001-Subsec. (c)(1). Pub. L. 107–16, §511(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000 for provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000, and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000.

Subsec. (c)(2). Pub. L. 107–16, §511(c), added par. (2).

Pub. L. 107–16, §511(b), struck out heading and text of par. (2). Text read as follows: "The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent."

1998-Subsec. (f). Pub. L. 105–206, §6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If-

> "(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and
>
> "(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

Subsec. (f)(2). Pub. L. 105–277 inserted concluding provisions.

1997-Subsec. (c)(2). Pub. L. 105–34, §501(a)(1)(D), substituted "the amount at which the average tax rate under this section is 55 percent" for "$21,040,000".

Subsec. (f). Pub. L. 105–34, §506(a), added subsec. (f).

1993-Subsec. (c)(1). Pub. L. 103–66, §13208(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000 and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000 for provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000.

Subsec. (c)(2), (3). Pub. L. 103–66, §13208(b)(1), (2), redesignated par. (3) as (2), struck out " ($18,340,000 in the case of decedents dying, and gifts made, after 1992)" after "exceed $21,040,000", and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987-Subsec. (b)(1). Pub. L. 100–203, §10401(b)(2)(A)(i), substituted "under subsection (c)" for "in accordance with the rate schedule set forth in subsection (c)".

Subsec. (b)(2). Pub. L. 100-[redacted]8, §10401(b)(2)(A)(ii), substituted "the provisions of subsec. (c)" for "the rate schedule set forth in subsection (c)".

Subsec. (c)(2)(A). Pub. L. 100–203, §10401(a)(1), substituted "1993" for "1988".

Subsec. (c)(2)(D). Pub. L. 100–203, §10401(a)(2), (3), substituted in heading "After 1983 and before 1993" for "For 1984, 1985, 1986, or 1987", and in text "after 1983 and before 1993" for "in 1984, 1985, 1986, or 1987".

Subsec. (c)(3). Pub. L. 100–203, §10401(b)(1), added par. (3).

1984-Subsec. (c)(2)(A), (D). Pub. L. 98–369 substituted "1988" for "1985" in subpar. (A) and substituted "1984, 1985, 1986, or 1987" for "1984" in heading and text of subpar. (D).

1981-Subsec. (b)(2). Pub. L. 97–34, §402(c), inserted "which would have been" before "payable" and ", if the rate schedule set forth in subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts" after "December 31, 1976,".

Subsec. (c). Pub. L. 97–34, §402(a), (b)(1), designated existing provision as par. (1), inserted heading "In general" and substituted in table provision that if the amount computed is over $2,500,000 then the tentative tax is $1,025,800 plus 50% of the excess over $2,500,000 for provisions that if the amount computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800 plus 53% of the excess over $2,500,000, over $3,000,000 but not over $3,500,000 then the tentative tax is $1,290,000 plus 57% of the excess over $3,000,000, over $3,500,000 but not over $4,000,000 then the tentative tax is $1,575,800 plus 61% of the excess over $3,500,000, over $4,000,000 but not over $4,500,000 then the tentative tax is $1,880,800 plus 65% of the excess over $4,000,000, over $4,500,000 but not over $5,000,000 then the tentative tax is $2,205,800 plus 69% of the excess over $4,500,000, over $5,000,000 then the tentative tax is $2,550,800 plus 70% of the excess over $5,000,000, and added par. (2).

1978-Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976-Pub. L. 94–455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first $10,000 in taxable transfers to 70 percent of taxable transfers in excess of $5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first $5,000 of the taxable estate to 77 percent of the taxable estate in excess of $10,000,000.

Effective Date of 2013 Amendment

Pub. L. 112–240, title I, §101(c)(3), Jan. 2, 2013, 126 Stat. 2318 , provided that:

"(A) In general.-Except as otherwise provided by in this paragraph, the amendments made by this subsection [amending this section and section 2010 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

"(B) Technical correction.-The amendment made by paragraph (2) [amending section 2010 of this title] shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312]."

Effective Date of 2010 Amendment

Pub. L. 111–312, title III, §302(f), Dec. 17, 2010, 124 Stat. 3302 , as amended by Pub. L. 113–295, div. A, title II, §206(b)(2), Dec. 19, 2014, 128 Stat. 4027 , provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 2010, 2502, 2505 and 2511 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009."

Effective Date of 2001 Amendment

Pub. L. 107–16, title V, §511(f)(1), (2), June 7, 2001, 115 Stat. 71 , provided that:

"(1) Subsections (a) and (b).-The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

"(2) Subsection (c).-The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002."

Effective Date of 1998 Amendments

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Effective Date of 1997 Amendment

Pub. L. 105–34, title V, §501(f), Aug. 5, 1997, 111 Stat. 847 , as amended by Pub. L. 105–206, title VI, §6007(a)(2), July 22, 1998, 112 Stat. 807 , provided that: "The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997."

Pub. L. 105–34, title V, §506(e)(1), Aug. 5, 1997, 111 Stat. 856 , as amended by Pub. L. 105–206, title VI, §6007(e)(1), July 22, 1998, 112 Stat. 809 , provided that: "The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997]."

Effective Date of 1993 Amendment

Pub. L. 103–66, title XIII, §13208(c), Aug. 10, 1993, 107 Stat. 469 , provided that: "The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992."

Effective Date of 1987 Amendment

Pub. L. 100–203, title X, §10401(c), Dec. 22, 1987, 101 Stat. 1330–431 , provided that: "The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987."

Effective Date of 1984 Amendment

Pub. L. 98–369, div. A, title I, §21(b), July 18, 1984, 98 Stat. 506 , provided that: "The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983."

Effective Date of 1981 Amendment

Pub. L. 97–34, title IV, §402(d), Aug. 13, 1981, 95 Stat. 301 , provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981."

Effective Date of 1978 Amendment

Pub. L. 95–600, title VII, §702(h)(3), Nov. 6, 1978, 92 Stat. 2931 , provided that: "The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977."

Effective Date of 1976 Amendment

Pub. L. 94–455, title XX, §2001(d)(1), Oct. 4, 1976, 90 Stat. 1854 , provided that: "The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977."

Short Title

Pub. L. 91–614, §1(a), Dec. 31, 1970, 84 Stat. 1836 , provided that: "This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under

sections 56, 2032, 2204, 2501, [illegible]3, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'."

Special Election With Respect to Estates of Decedents Dying in 2010

Pub. L. 111–312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300 , provided that: "Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection."

Clarification of Treatment of Certain Exemptions for Purposes of Federal Estate and Gift Taxes

Pub. L. 98–369, div. A, title VI, §641, July 18, 1984, 98 Stat. 939 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that:

"(a) General Rule.-Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(b) Effective Date.-

"(1) In general.-The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

"(2) Treatment of certain transfers treated as taxable.-The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

"(3) No inference.-No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes."

Reports With Transfers of Public Housing Bonds

Pub. L. 98–369, div. A, title VI, §642, July 18, 1984, 98 Stat. 939 , provided that:

"(a) General Rule.-With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

"(b) Penalty for Failure to Report.-Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject."

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Appellant, v. IDAHO STATE TAX COMMISSION, Respondent.	CASE NO. CV-OC-2015-00106 NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, THE IDAHO STATE TAX COMMISSION AND THE PARTY'S ATTORNEYS, LAWRENCE G. WASDEN, IDAHO ATTORNEY GENERAL AND PHIL N. SKINNER AND DAVID B. YOUNG, DEPUTY ATTORNEYS GENERAL, STATE OF IDAHO, P.O. BOX 36, BOISE, ID 83722-0410, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, the Estate of Zippora Stahl, Deceased, by and through its Personal Representative, Kathleen Krucker, appeals against the above named respondent, the Idaho State Tax Commission to the Idaho Supreme Court from the Judgment, and the Memorandum

Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment, entered in the above entitled action on August 21, 2015 and November 16, 2015, respectively, the Honorable Judge Jason D. Scott presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 I.A.R.

3. Without waiving the right to raise other or additional issues, the preliminary issues on appeal are:

(a) Whether the District Court erred by holding that Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 was incorporated into the Idaho Income Tax Act.

(b) Whether the District Court erred by holding that the plain language of the Idaho Income Tax Act incorporates provisions of federal tax law other than the section text of the Federal Internal Revenue Code as set forth in Title 26 of the United States Code.

(c) Whether the District Court erred by holding that Section 1022 from the Internal Revenue Code of 1986 was in effect with respect to the Estate of Zippora Stahl, Deceased for purposes of the Idaho Income Tax Act.

(d) Whether the District Court erred by holding that Congress' repeal of Section 1022 from the Internal Revenue Code of 1986 was limited to estates of decedents that did not elect to take a carryover federal income tax basis pursuant to Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296.

(e) Whether the District Court erred by holding that disparities between the measurement of taxable income reported at the federal level and state level must be specifically provided in the Idaho Income Tax Act.

(f) Whether the District Court erred by holding that Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 is part of Title 26 of the United States Code.

4. No order been entered sealing all or any portion of the record.

5. (a) A reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in in electronic format: Hearing on Motion to Strike, July 15, 2015, 3:00PM; Hearing on Cross Motions for Summary Judgment, July 23, 2015, 10:00AM.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

(a) Motion for Partial Summary Judgment (filed June 26, 2015).

(b) Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment (filed June 26, 2015).

(c) Affidavit of Ralph V. Seep (filed June 26, 2015).

(d) Motion for Summary Judgment (filed June 26, 2015).

(e) Memorandum in Support of Tax Commission's Motion for Summary Judgment (filed June 26, 2015).

(f) Joint Stipulation of Findings of Fact (with exhibits) (filed June 26, 2015).

(g) Answering Brief of Plaintiff in Response to Tax Commission's Motion for Summary Judgment (filed July 17, 2015).

(h) Reply Memorandum in Support of Tax Commission's Motion for Summary Judgment (filed July 17, 2015).

(i) Plaintiff's Motion for Reconsideration and for Amendment of Judgment (filed September 3, 2015).

(j) Plaintiff's Memorandum in Support of Motion for Reconsideration and for Amendment of Judgment (filed September 3, 2015).

(k) Memorandum Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment (filed September 24, 2015).

(l) Plaintiff's Reply in Support of Motion for Reconsideration and for Amendment of Judgment (filed October 1, 2015).

(m) Order for Supplemental Briefing (entered October 13, 2015).

(n) Defendant's Supplemental Brief Opposing Plaintiff's Motion for Reconsideration and for Amendment of Judgment (filed October 30, 2015).

(o) Plaintiff's Memorandum in Response to Order for Supplemental Briefing (filed October 30, 2015).

(p) Affidavit of Tyler Rice in Response to Order for Supplemental Briefing (filed October 30, 2015).

7. The appellate requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court.

(a) All exhibits attached to the Joint Stipulation of Findings of Fact filed on June 26, 2015.

(b) Appendix "A" to the Affidavit of Tyler Rice in Response to Order for Supplemental Briefing filed October 30, 2015.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Dianne Cromwell
Ada County Courthouse
Chambers Room 4127
200 W. Front Street
Boise, ID 83702

(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED this 23rd day of December, 2015.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden, Idaho Attorney General	X	US Mail, with Postage
Phil N. Skinner		Prepaid
David B. Young	_____	Overnight Mail
Deputy Attorneys General	_____	Hand Delivery
State of Idaho	X	Facsimile No. 208-334-7844
P.O. Box 36	_____	Electronic Mail
Boise, ID 83722-0410	X	phil.skinner@tax.idaho.gov
	X	david.young@tax.idaho.gov

Maximilian Held

Nicholas S. Marshall, ISBN 5578
Maximilian Held, ISBN 9062
AHRENS DEANGELI LAW GROUP LLP
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P.O. Box 9500
Boise, Idaho 83707-9500
Telephone: (208) 639-7799
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, v. IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CV-OC-2015-00106 PLAINTIFF'S REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD [I.A.R. 28(c)]

COMES NOW, Plaintiff, the Estate of Zippora Stahl, Deceased, by and through its Personal Representative, Kathleen Krucker, and her counsel of record, Ahrens DeAngeli Law Group LLP, and requests, pursuant to Idaho Appellate Rule 28(c) that the following be added to the record:

1. Memorandum in Support of Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep) (filed July 2, 2015);
2. Plaintiff's Response in Objection to Motion to Strike (filed July 13, 2015); and
3. Affidavit of Nicholas S. Marshall in Response to Defendant's Motion to Strike (filed July 13, 2015).

DATED this 19th day of January, 2016.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Lawrence G. Wasden, Idaho Attorney General	X	US Mail
Phil N. Skinner		Overnight Mail
David B. Young		Hand Delivery
Deputy Attorneys General	X	Facsimile No. 208-334-7844
State of Idaho		Electronic Mail
P.O. Box 36		phil.skinner@tax.idaho.gov
Boise, ID 83722-0410		david.young@tax.idaho.gov

Deanna Silvers

Deanna Silvers

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL

DAVID B. YOUNG [ISB # 6380]
PHIL N SKINNER [ISB #8527]
DEPUTY ATTORNEYS GENERAL
STATE OF IDAHO
P. O. BOX 36
BOISE, ID 83722-0410
TELEPHONE: (208) 334-7542
FACSIMILE: (208) 334-7844

Attorneys for the Idaho State Tax Commission

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, -vs- IDAHO STATE TAX COMMISSION, Defendant.	CASE NO. CVOC1500106 **REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD**

COMES NOW Defendant, Idaho State Tax Commission, by and through its attorney of record, and, pursuant to Idaho Appellate Rule 28(c), requests the following be added to the record:

1. Tax Commission's Motion to Strike (Affidavit of Ralph V. Seep) (filed July 2, 2015); and
2. Order on Motion to Strike (entered by the Court July 22, 2015).

DATED this 11 day of January 2016.

IDAHO STATE TAX COMMISSION

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of January 2016, I have served a true and correct copy of the within and foregoing Tax Commission's REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD upon Plaintiff indicated below:

NICHOLAS S MARSHALL	X U.S. Mail, Postage Prepaid
MAXIMILIAN HELD	_____ Hand Delivered
AHRENS DEANGELI LAW GROUP LLP	_____ Overnight Mail
PO BOX 9500	_____ Telecopy (Fax)
BOISE ID 83707-9500	_____ Email

DAVID B. YOUNG
DEPUTY ATTORNEY GENERAL

Stephen W. Kenyon
Clerk of Supreme Court
451 W State Street
Boise, Idaho 83720

In re: Estate of Zippora Stahl v. Idaho State Tax Commission, Docket No. 43832

Notice is hereby given that on Tuesday, February 2, 2016, I lodged a transcript of 69 pages in length for the above-referenced appeal with the district court clerk of Ada County in the Fourth Judicial District.

The following files were lodged:

Proceeding 7/15/2015 and Proceeding 7/23/2015

David Cromwell
Tucker & Associates

cc: sctfilings@idcourts.net
PDF format of completed files emailed to Supreme Court

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff-Appellant, vs. IDAHO STATE TAX COMMISSION, Defendant-Respondent.	Supreme Court Case No. 43832 CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10th day of February, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff-Appellant, vs. IDAHO STATE TAX COMMISSION, Defendant-Respondent.	Supreme Court Case No. 43832 CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

NICHOLAS S. MARSHALL
ATTORNEY FOR APPELLANT
BOISE, IDAHO

DAVID B. YOUNG
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

Date of Service: FEB 10 2016

CERTIFICATE OF SERVICE

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff-Appellant, vs. IDAHO STATE TAX COMMISSION, Defendant-Respondent.	Supreme Court Case No. 43832 CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 23rd day of December, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk