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Estate of Stahl v. Idaho State Tax Com'n Appellant's Brief Dckt. 43832

IN THE SUPREME COURT FOR THE STATE OF IDAHO

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff-Appellant, v. IDAHO STATE TAX COMMISSION, Defendant-Respondent.	SUPREME COURT NO. 43832 DISTRICT COURT NO. CV-OC-2015-00106 **APPELLANT ESTATE OF ZIPPORA STAHL'S OPENING BRIEF ON APPEAL**

APPELLANT'S BRIEF

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

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I. STATEMENT OF THE CASE

A. Nature of the Case.

This is purely a matter of statutory interpretation. As explained below, the Idaho Income Tax Act, I.C. §[1] 63-3001 *et seq.* (the "Idaho Act")[2] requires taxpayers to calculate their 2012 Idaho taxable income pursuant to the Internal Revenue Code of 1986 as it existed on January 1, 2012 ("IRC").[3] That version of the IRC sets the income tax basis of an asset owned by a decedent at its date-of-death value pursuant to IRC § 1014. Nonetheless, the Idaho State Tax Commission (the "Commission") insists that the "carryover basis" rules previously contained in IRC § 1022 between June 1, 2001 and December 17, 2010 ("Repealed § 1022") govern despite having been retroactively repealed from the IRC on December 17, 2010.[4] The Commission relies primarily on the Estate's use of a federal uncodified election (the "Public Law Election") provided at § 301(c) ("TRUIRJCA § 301(c)") of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 ("TRUIRJCA"), which provided the

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[1] Unless otherwise indicated, references to sections ("§") refer to sections of the Idaho Code or 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1022" refer to § 1022 of the Internal Revenue Code as it existed for the years 2001-2009, before it was retroactively repealed on December 17, 2010.

[2] Except where otherwise specified, all references to the "Idaho Act" are to the Idaho Income Tax Act, I.C. § 63-3001 *et. seq.* as amended and in effect during the 2012 calendar year, which was the year of the Estate's sale of the real property at issue.

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

[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).

Estate relief from the federal estate tax in exchange for calculating its federal income tax with the carryover basis rules of Repealed § 1022. As explained below, the Estate denies that Repealed § 1022 and the Public Law Election were incorporated into the Idaho Act on January 1, 2012.

B. Course of Proceedings.

On June 26, 2015, the parties filed cross motions for summary judgment. (Clerk's Record on Appeal (hereinafter referred to as the "R.") at 000042, 000101.) The District Court heard oral argument on July 23, 2015. On July 31, 2015, the District Court issued a Memorandum Decision and Order on Cross-Motions for Summary Judgment (the "Memorandum Decision"), granting summary judgment to the Commission and entered Judgment on August 21, 2015. (R. at 000229, 244.) The Estate timely moved for Reconsideration and for Amendment of Judgment on September 3, 2015. (R. at 000246.) After initial briefing, the District Court ordered supplemental briefs analyzing whether a statutory note to Title 26 of the United States Code ("Title 26") should be regarded as part of Title 26 for purposes of the Idaho Act. (R. at 000303.) After reviewing the parties' supplemental briefs, the District Court issued a Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment ("Reconsidered Decision") on November 16, 2015. (R. at 000330.) On December 23, 2015, the Estate timely filed a Notice of Appeal of that decision as well as the District Court's Judgment. (R. at 000359.)

C. Statement of Facts.

Zippora Stahl ("Mrs. Stahl") died on June 26, 2010 while domiciled in Jerome County, Idaho. (R. at 000006, 000044.) At the time of her death, Mrs. Stahl owned an interest in

appreciated real estate located in Chino, California (the "Ranch"). (R. at 000045.) As part of the Estate's probate proceeding in California, the fair market value of the Ranch on the date of Mrs. Stahl's death was determined to be $16,000,000. *Id.*

On January 17, 2012, the Estate filed Federal Form 8939 with the Internal Revenue Service electing, pursuant to the Public Law Election, to be relieved from paying the federal estate tax that would otherwise have been imposed by the federal government on the estates of decedents dying in 2010. (R. at 000045, 000300-302.) The State of Idaho has not imposed any form of estate or inheritance tax on the estates of Idaho decedents since 2004.[5] Therefore, the Estate's filing of the Public Law Election produced a federal tax benefit but no Idaho tax benefit.

The Estate sold the Ranch on December 21, 2012 for $16,318,909. (R. at 000045.) On April 15, 2013, the Estate filed an IRS Form 1041 reflecting $14,372,420.00 in federal gain from the sale of the Ranch, as required by the Public Law Election, and paid the requisite federal income taxes thereon. (R. at 000018-19.) Contemporaneously, the Estate filed Idaho Form 66 for tax year 2012 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 Ranch, which the Estate timely paid. (R. at 000049.) On September 26, 2013, the Estate filed Amended Form 66 reporting $309,469.00 of Idaho adjusted income and $2,672.00 of total Idaho tax liability, and requesting a refund of

[5] Technically, the State of Idaho imposes an estate tax equal in amount to the credit for state death taxes allowed by IRC § 2011. However, no credit for state death taxes has been allowed pursuant to IRC § 2011 since December 31, 2004. Therefore, the maximum estate tax levied by the State of Idaho is $0.00. *See* I.C. § 14-403; IRC § 2011(f) (repealed).

$1,026,435.00 of the 2012 Idaho income taxes previously paid. (R. at 000046.) After the Commission denied the refund request, the Estate filed its complaint with the District Court in the above matter on January 6, 2015. (R. at 000005-9.)

II. ISSUES PRESENTED ON APPEAL

1. Whether, as discussed in Section IV.B of this brief, I.C. § 63-3011B requires the Estate to calculate its 2012 "taxable income" in accordance with the IRC including § 1014 or, as discussed in Section IV.C.1 of this brief, in accordance with the carryover basis rules of Repealed § 1022.

2. Whether, as discussed in Section IV.C.2 of this brief, the version of I.C. § 63-3004 in effect for the 2012 tax year incorporates into its definition of "Internal Revenue Code" the uncodified Public Law Election set forth in TRUIRJCA § 301(c).

III. ATTORNEY FEES ON APPEAL

The Estate requests an award of attorney fees and costs on appeal pursuant to I.C. § 63-3049(d) and Rules 40 and 41 of the Idaho Appellate Rules.

IV. ARGUMENT

A. Standard of Review.

"This Court reviews questions of law de novo." *State v. Moore*, 131 Idaho 814, 823 (1998) (citing *Hummer v. Evans*, 129 Idaho 274 (1996)); *see also Hummer*, 129 Idaho at 279 ("On issues of law, this Court exercises free review."). Statutory interpretation, in particular, is "a question of law this Court reviews de novo." *State v. Schultz*, 151 Idaho 863, 865 (2011) (citing *State v. Anderson*, 145 Idaho 99 (2008)). Here, the District Court noted that the parties "do not dispute the facts" and

that "the party whose legal position is correct, in light of the agreed facts, [was] entitled to summary judgment." (R. at 000236.) As matters of statutory interpretation, which is a question of law, the District Court's Memorandum Decision and Reconsidered Decision are subject to de novo review.

B. The Estate's Idaho Taxable Income for 2012 Is Calculated Pursuant to the IRC Including § 1014.

As discussed in the following Section IV.B.1 of this brief, the Idaho Act requires the Estate to determine its "Idaho taxable income" by first determining its taxable income pursuant to the "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012." As discussed below in Section IV.B.2 of this brief, I.C. § 63-3004's clear and unambiguous definition of the IRC unsurprisingly incorporates into the Idaho Act only the statutory text of the IRC. Finally, Section IV.B.3 of this brief explains how the Idaho Act requires the Estate to calculate its taxable income pursuant to the IRC including IRC § 1014.

1. The Idaho Act Requires the Estate to Determine Its "Idaho Taxable Income" by First Determining Its Taxable Income under tbe IRC.

The Idaho Act imposes a tax on the Estate's "Idaho taxable income." I.C. § 63-3024. Through a series of related statutes under the Idaho Act and as previously recognized by this Court and the Idaho Attorney General, federal taxable income as determined under the IRC is the starting point for determining the Estate's "Idaho taxable income."

First, I.C. § 63-3011C defines "Idaho taxable income" as "***taxable income*** as modified pursuant to the Idaho adjustments specifically provided in [the Idaho Act]." (Emphasis added). Next, Idaho Code § 63-3011B defines "taxable income" as "federal taxable income ***as determined***

under the Internal Revenue Code." (Emphasis added). Finally, I.C. § 63-3004, as in effect for 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). This plain and unambiguous statutory language clearly requires the Estate to use its federal taxable income "as determined under the Internal Revenue Code of 1986 as amended, and in effect on the first day of January, 2012" as the starting point for calculating its "Idaho taxable income."

This Court has recognized that very point multiple times. For example, this Court stated that "'[t]axable' income is defined as 'federal taxable income as determined under the Internal Revenue Code'." *Idaho State Tax Comm'n v. Robert A. and Mary L. Stang*, 135 Idaho 800, 802 (2001). Likewise, this Court indicated that "Idaho incorporates the Federal Internal Revenue Code by reference." *Houston v. Idaho State Tax Commission*, 126 Idaho 718, 720 (1995). Furthermore, this Court has stated that "[w]e agree... that the intent of the legislature is to make, 'insofar as possible ... the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income.'" *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 866 (1991) (quoting I.C. § 63-3002).

Consistent with the Idaho Act's and this Court's clear recognition that federal taxable income as determined under the IRC is the starting point for determining a taxpayer's "Idaho taxable income," the Idaho Attorney General addressed a 1995 Opinion to the Commission that cogently

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

explains this concept. 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, 109 Stat. 93, that retroactively provided a deduction for 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, which is 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, was "not a deduction available for the computation of Idaho taxes under present Idaho law." *Id.* Accordingly, the Idaho Attorney General instructed the Commission that the SEHIA provisions allowing the deduction were not incorporated into Idaho law by I.C. § 63-3004 and, therefore, unavailable to Idaho taxpayers calculating their 1994 Idaho taxable incomes. *Id.*

2. I.C. § 63-3004's Clear and Unambiguous Definition of the IRC Incorporates into the Idaho Act Only the Statutory Text of the IRC.

As noted, the first step in calculating the Estate's "Idaho taxable income" is the determination of the Estate's federal taxable income pursuant to the IRC. Therefore, this Court must determine precisely which provisions of federal tax law comprise the body of law the Idaho

Legislature refers to in I.C. § 63-3004 as "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012."

Idaho law governing statutory interpretation is clear. This Court has recently stated that because the "best guide to legislative intent is the words of the statute itself, the interpretation of a statute must begin with the literal words of the statute." *Gordon v. Hedrick*, 159 Idaho 604 (2015). Furthermore, as stated by this Court in *Hillcrest Haven Convalescent Ctr. v. Idaho Dept. of Health and Welfare*, 142 Idaho 123, 125 (2005), "[i]f a statute is clear on its face, it is unnecessary to engage the tools of statutory construction." In other words, "[i]f the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011). Finally, this Court also noted that "the interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *Verska*, 151 Idaho at 893.

As explained below, the plain, usual, and ordinary meaning of the words "Internal Revenue Code of 1986 of the United States, as amended and in effect of the first day of January, 2012" includes only those federal statutes that the U.S. Congress has included in the IRC's statutory text. Although that states the obvious, it is important to explain in detail why this is so because, as explained in Section IV.C of this brief, the District Court ruled that I.C. § 63-3004 incorporates into the Idaho Act provisions of federal law that are not part of the IRC. Accordingly, Sections IV.B.2.a through IV.B.2.c of this brief discuss the evolution of the IRC from its origin in the Revenue Act of 1939 and the Internal Revenue Title of 1954. Section IV.B.2.d of this brief then

analyzes the history of IRC § 7701(a)(29)'s definition of the IRC. Section IV.B.2.e of this brief further explains the relationship of the IRC to Title 26 and the concept of "positive law" as their sole distinguishing feature. Section IV.B.2.f of this brief then describes Congress' "stated means" for amending the IRC. Finally, Section IV.B.2.g concludes this Section IV.B with a discussion of why the plain, usual and ordinary meaning of the IRC incorporates only the statutory text of IRC §§ 1- 9834 into the Idaho Act.

a. The Sixteenth Amendment and the Revenue Act of 1939.

The Sixteenth Amendment to the U.S. Constitution, which permitted the federal government to levy an income tax, became part of the United States Constitution on February 25, 1913. U.S. Const. amend. XVI. Within months of the amendment's ratification, Congress passed the Revenue Act of 1913 which imposed a federal tax on the income of individuals. Boris Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates, and Gifts* ¶ 1.1.5. From 1913 until 1939, federal income tax provisions were scattered through numerous volumes of the U.S. Statutes at Large. *Id.* The Revenue Act of 1939 consolidated and codified those federal income tax provisions into the Internal Revenue Code of 1939. *Id.* Except to the extent that specific provisions of the Internal Revenue Code of 1939 were amended, it remained intact until 1954.

b. The Internal Revenue Code of 1954.

The Internal Revenue Code of 1954 was first set forth as an Act of Congress in H. R. 8300 (the "1954 Revenue Act") that was signed into law on August 16, 1954. *See* Internal Revenue Act of 1954, Pub. L. No. 83-591, 68A Stat., *available at* https://bulk.resource.org/gao.gov/83-591/00002F8A.pdf,

a portion of which is attached hereto as **Appendix A**; *see also* 1 U.S.C. § 204 (note) (entitled "Title 26, Internal Revenue Code."). The Internal Revenue Code of 1954 supplanted the Internal Revenue Code of 1939. *See* Bittker & Lokken, *supra*, at ¶ 1.1.5. Section (a)(1) of the 1954 Revenue Act specifically provides that the "provisions of this Act set forth under the heading '**Internal Revenue Title**' may be cited as the "Internal Revenue Code of 1954." *See* The Internal Revenue Act of 1954, Pub. L. No. 83-591, 68A Stat., *available at* https://bulk.resource.org/gao.gov/83-591/00002F8A.pdf (emphasis added). Section (d) of the 1954 Revenue Act, titled "Enactment of Internal Revenue Title Into Law", provides that "[t]he Internal Revenue Title referred to in subsection (a)(1) is as follows:". *Id.* What follows that colon is a summary of the Internal Revenue Title's subtitles A through G. *Id.* Those subtitles are comprised exclusively of Sections 1 through 8023 which are in turn comprised of subsections all of which are set forth in the 1954 Revenue Act following the aforementioned colon.[7] *Id.* Importantly, at page 807 of the 1954 Revenue Act, paragraph 29 of subsection 7701(a) provides the following definition of the Internal Revenue Code of 1954:

> (29) Internal Revenue Code. The term "Internal Revenue Code of 1954" means **this title**, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(Emphasis added). Thus, Congress clearly defined the Internal Revenue Code of 1954 as being comprised exclusively of "this title". The words "this title" appears within the text of the Internal Revenue Title of 1954 which, as clearly stated at Section (d) of the 1954 Revenue Act, is comprised

[7] The provisions comprising the 1954 Revenue Act, Subpart through Subsection, as such provisions are subsequently amended are referred to herein as "statutory text."

exclusively of the 1954 Revenue Act's statutory text: Subtitles (largest subdivision) to Subsection (smallest subdivision).[8] Accordingly, the term "Internal Revenue Code of 1954" was clearly defined by Congress as consisting of the statutory text (Subtitles through Subsections) of the 1954 Revenue Act.

c. The Internal Revenue Code of 1986.

The term "Internal Revenue Code of 1986" first appears in Public Law 99-514, dated October 22, 1986 (the "Internal Revenue Act of 1986"). Section 2(a) of the Internal Revenue Act of 1986 unambiguously states as follows:

> (a) REDESIGNATION OF 1954 CODE. – The 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, "Internal Revenue Code of 1986, as amended" is clearly defined as consisting of the statutory text of the Internal Revenue Title of 1954 as such text is specifically amended by Congress (including the 1986 name change to "Internal Revenue Code of 1986"). In other words, Congress created the group of laws it defined as the "Internal Revenue Code of 1986" and specifically defined that group of laws as consisting only of the statutory text originally set forth as the Internal Revenue Title of 1954 and amendments to that statutory text enacted by Congress after August 16, 1954.

d. 1987 Amendment to IRC § 7701(a)(29)'s Definition of the IRC.

Two years after the Internal Revenue Act of 1986 redesignated the "Internal Revenue Title of 1954" as the "Internal Revenue Code of 1986," Congress amended IRC § 7701(a)(29) (formerly § 7701(a)(29) of the Internal Revenue Code of 1954). Prior to November 10, 1988, IRC § 7701(a)(29)

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[8] The Internal Revenue Code continues to be organized in the same manner today as it is organized into subtitles, chapters, subchapters, parts, subparts, sections and subsections.

remained unchanged from the version first enacted as part of the 1954 Revenue Act. As noted, that version of IRC § 7701(a)(29) stated as follows:

> (29) Internal Revenue Code. The term "Internal Revenue Code of 1954" means **this title**, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(Emphasis added). As also noted, that version of IRC § 7701(a)(29) was enacted as part of the Internal Revenue Title of 1954 and the words "this title" refer to the Internal Revenue Title of 1954. Thereafter, Section 1(c) of the Technical and Miscellaneous Revenue Act of 1988 provided a "clerical amendment" that replaced IRC § 7701(a)(29)'s reference to the year "1954" with the year "1986." Pub. L. No. 100-647, 102 Stat. 3342. As a result of the Section 1(c) amendment, IRC § 7701(a)(29) states as follows:

> (29) Internal Revenue Code. The term "Internal Revenue Code of 1986" means **this title**, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(Emphasis added). No other amendments have ever been made to IRC § 7701(a)(29)'s text either before or after November 10, 1988. Therefore, in the version of the IRC that existed on January 1, 2012, IRC § 7701(a)(29)'s reference to the words "this title" continued to be a reference to the Internal Revenue Title of 1954 as such title was specifically amended by Congress after August 16, 1954 (including the 1986 name change to "Internal Revenue Code of 1986").[9]

e. Relationship of the IRC to Title 26 and the Concept of "Positive Law".

[9] Interestingly, the above quoted text of Section 7701(a)(29), along with its reference to the words "this title", also appear in Title 26 where the IRC is set forth verbatim as part of Title 26. As discussed in more detail below in Section IV.C.2 of this brief, that detail appears to have confused the District Court.

All federal statutes, including the federal statutes that comprise the IRC, are published in their entirety as Public Laws in the United States Statutes at Large ("Statutes at Large"). 1 U.S.C. § 112. The statutory text of the IRC is also set forth verbatim, subtitle through subsection, in Title 26. As well as confirming that the IRC and Title 26 contain identical statutes, the statutory note to 1 U.S.C. § 204 also establishes the Internal Revenue Code's pedigree as the successor to the statutory text of the Internal Revenue Title of 1954 when it states the following:

> The Internal Revenue Code of 1954 was enacted in the form of a separate code by act Aug. 16, 1954, ch. 736, 68A Stat. 1. Pub. L. 99–514, § 2(a), Oct. 22, 1986, 100 Stat. 2095, provided that the Internal Revenue Title enacted Aug. 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the "Internal Revenue Code of 1986". ***The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code***.

1 U.S.C. § 204 (note) (entitled "Title 26, Internal Revenue Code.") (Emphasis added).

The subtle distinction between the statutory text of Title 26 and the statutory text of the IRC relates only to the concept of "positive law." The provisions of the IRC as they are set forth in the Statutes at Large are referred to as "positive law." Mary Whisner, *The United States Code, Prima Facie Evidence, and Positive Law*, 101 Law Libr. J. 545, 556 (2009). The Internal Revenue Code is considered to be positive law because the "Internal Revenue Code of 1954 was enacted into positive law ***in the form of a separate code*** and, as amended, is the authoritative statement of the law." *United States v. Mclain*, 597 F. Supp. 2d 987, 994, n.6 (D. Minn. 2009) (emphasis added); *see also Young v. IRS*, 596 F. Supp 141, 149 (N.D. Ind. 1984) ("Congress did enact the Internal Revenue Code as a ***separate Code***.") (emphasis added). In contrast, Title 26 was not enacted by Congress in the form of a separate code. *See Id.* (explaining that "although Congress did not pass the Code as a *title*, it did enact the

Internal Revenue Code as a separate code ... which was then denominated as Title 26 by the House Judiciary Committee pursuant to 1 U.S.C. § 202(a)" after its enactment). Title 26, therefore, is not considered to be "positive law." *See* Whisner, *supra*, at 556. In describing the IRC's unique relationship to Title 26, Professor Whisner explains, "[t]his 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." *Id.* (emphasis added). Thus, a reference to the "Internal Revenue Code of 1986" refers to the statutory text enacted by Congress as positive law in the form of the separate code comprised of the Internal Revenue Title of 1954, as amended (including the 1986 name change to "Internal Revenue Code of 1986"). On the other hand, a reference to "Title 26," is a reference to the statutory text of the IRC compiled in the format of Title 26 which is not a positive law enactment.

f. Congress' "Stated Means" for making Amendments to the IRC.

In keeping with Congress' clear definition of the IRC as positive law enacted in the form of a separate code consisting only of (a) the laws originally set forth in the 1954 Revenue Act and (b) subsequent Congressional enactments amending those laws, Congress utilizes a clearly defined "stated means" for denoting enactments that amend the IRC. For example, Section 1(b) of TRUIRJCA clearly delineates which of its provisions amends the IRC 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.

(Emphasis added). The intended effect of Congress' "stated means" of amending the IRC is clarified in *United States v. Tourtellot*, 483 B.R. 72, 77-78 (2012), in which 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") 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 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 to Section 1(b) of TRUIRJCA—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). Clearly, therefore, when Congress intends to modify the IRC's statutory text it does so explicitly and unambiguously.

g. Plain, Usual and Ordinary Meaning of the term "Internal Revenue Code of 1986".

As discussed, in I.C. § 63-3004 the Idaho Legislature plainly and unambiguously defined the term "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." In turn, Congress has plainly and unambiguously defined the term "Internal Revenue Code of 1986" to include only that positive law enactment comprised of the statutory text of the 1954 Revenue Title and subsequent amendments and additions made to the statutory text of the 1954 Revenue Title. Those amendments include the 1986 name change to "Internal Revenue Code of 1986" made by the Internal Revenue Act of 1986 and countless other changes specifically made by Congress, prior to January 1, 2012, to that separate positive law code. On January 1, 2012, therefore, the IRC consisted of the positive law statutory text set forth at IRC §§ 1 – 9834.[10] Accordingly, that statutory text (i.e., IRC §§ 1 – 9834) is what I.C. § 63-3004 plainly and unambiguously incorporated into the Idaho Act.

3. The Idaho Act Requires the Estate to Calculate its Taxable Income Pursuant to the IRC.

Calculation of the Estate's federal taxable income as determined under the IRC, comprised of §§ 1 – 9834, as required by I.C. §§ 63-3011B and 63-3004 is straightforward. The sections of the IRC that are relevant to the calculation of the Estate's Idaho taxable income in 2012 are discussed in this Section IV.B.3. IRC § 63(a) defines "taxable income" as "gross income" minus allowable deductions. IRC § 61(a)(3) defines "gross income" to include "[g]ains derived from dealings in property." IRC § 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." IRC § 1011 defines "adjusted basis" as the taxpayer's "basis" as defined in applicable provisions of Subchapter O of Chapter 1 of the

[10] Moreover, the exact statutory text of the IRC was also set forth in Sections 1 – 9834 of Title 26 but not as positive law. 26 U.S.C. §§ 1 – 9834 (2012).

IRC ("Subchapter O"). When the property at issue is acquired from a decedent, IRC § 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." In many cases, including this one, IRC § 1014 provides taxpayers a valuable income tax benefit referred to as a "stepped-up basis".

As noted, the Idaho Legislature's plain and unambiguous language incorporates the IRC as of January 1, 2012 into the Idaho Act.[11] Section 1014 is part of the IRC as of January 1, 2012. Therefore, the Idaho Act, by requiring the calculation of the Estate's federal taxable income to be made pursuant to the terms of the IRC, mandates the Estate's basis in the Ranch to be determined by reference to the Ranch's date of death value in accordance with IRC § 1014.

C. The District Court Erred in Holding that I.C. § 63-3004 Incorporates Federal Tax Law That Is Not Part of the IRC into the Idaho Act.

As discussed in this Section IV.C., the fundamental flaw in the District Court's rulings is the District Court's construction of I.C. § 63-3004 as incorporating not only the IRC as it existed on January 1, 2012 but also as incorporating additional federal statutes that were not part of the IRC. First, Section IV.C.1 of this brief addresses the District Court's error in ruling that Repealed § 1022 was part of the IRC on January 1, 2012. Next, Section IV.C.2 of this brief discusses the District Court's error in ruling that the Public Law Election was part of the IRC on January 1, 2012.

1. The District Court Erred in Holding Repealed § 1022 Was Part of the IRC on January 1, 2012.

[11] *See* discussion at Section IV.B.1, *supra*.

In its Memorandum Decision, the District Court ruled that the Estate is required to use Repealed § 1022 rather than IRC § 1014 to determine its income tax basis in the Ranch. (R. at 000240.) Ignoring the clear fact that Repealed § 1022 had been completely repealed from the IRC on December 17, 2010, the District Court based its conclusion on *sua sponte* analysis that had not been briefed by either party. (R. at 000239-41.) Due to Repealed § 1022's total repeal in 2010, it was not part of the IRC on January 1, 2012, was not incorporated into the Idaho Act by I.C. § 63-3004 and could not be used by the Estate to calculate its Idaho taxable income under I.C. §§ 63-3011B and 63-3011C. Therefore, as discussed in this Section IV.C.1, the District Court's ruling in its Memorandum Decision that the repeal of Repealed § 1022 "did not apply to the Estate" was clearly in error.[12] The following Sections IV.C.1.a through IV.C.1.d explain why this is so.

a. <u>Repealed § 1022's Background.</u>

On June 7, 2001, President George W. Bush signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Pub. L. No. 107-16, 115 Stat. 38. For decedents dying after December 31, 2009, EGTRRA repealed the federal estate tax, repealed the

[12] Importantly, the District Court acknowledged this error in the Reconsidered Decision, noting that "[o]ne of the Estate's arguments [in its Motion for Reconsideration] 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 [the Public Law Election] was incorporated into the Idaho Income Tax Act for the 2012 tax year." (R. at 000338.) The District Court then went on to state that "the Court concludes it should have decided whether [the Public Law Election] was incorporated into the Idaho Income Tax Act for the 2012 tax year, as the parties originally asked." *Id.* Nevertheless, the Estate addresses the District Court's analysis here because the District Court did not revise its Memorandum Decision to correct its error, but rather stated that "no further discussion of the conceptually distinct basis on which the Court initially resolved this case is either necessary or productive." *Id.*

§ 1014 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 TRUIRJCA. Pub. L. No. 111-312, 124 Stat. 3296. Section 301(a) of TRUIRJCA ("TRUIRJCA § 301(a)") amended the IRC "to read as [IRC §§ 1014 and 1022] would read if [EGTRRA] ***had never been enacted***." (Emphasis added).[13] Therefore, on December 17, 2010, IRC § 1014 was reinstated and § 1022, having been added to the Internal Revenue Code by EGTRRA, was expressly and retroactively repealed from the IRC.

b. Title 26 Indicates that Repealed § 1022 Was Totally Repealed.

A review of the IRC as published at Title 26 in the United States Code Annotated ("U.S.C.A") (West) conclusively confirms that TRUIRJCA § 301(a) repealed § 1022 from the IRC in its entirety 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 Stat. 3300 Effective: December 17, 2010." (Emphasis added). Furthermore, the text of Title 26 as set forth in the U.S.C.A. does not suggest that Repealed § 1022 was repealed for some taxpayers but not others. Therefore, as of January 1, 2012, Repealed § 1022 did not exist as a section of the IRC with respect to any taxpayer.

The sections of Title 26 are identical to the sections of the IRC. *See* 1 U.S.C. § 204 (note) (entitled "Title 26, Internal Revenue Code."). Furthermore, the statutes set forth in Title 26 "establish

[13] The complete text of Section 301(a) of TRUIRJCA 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 EGTRRA.

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). Thus, the District Court erred when it ignored Repealed § 1022's absence from Title 26 beginning on December 17, 2010, which establishes prima facie that Repealed § 1022 was not part of the IRC on January 1, 2012.

c. Congress' Method of Repeal Indicates its Intention that Repealed § 1022 be Completely Repealed from the IRC and that the Basis Rules of Repealed § 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 IRC to estates making the Public law Election, Congress would have enacted a section entirely different than TRUIRJCA § 301(c). As mentioned, Congress' "stated means" for incorporating a provision into the IRC is to name a section or part of the IRC "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 Repealed § 1022 applicable to taxpayers as a provision of the IRC, it would have retained Repealed § 1022 as part of the IRC and would have amended its statutory text to provide for the application of its basis rules only to estates making the Public Law Election. Likewise, Congress would also have amended the statutory text of IRC §§ 1014 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 as part of the statutory text of the IRC.

Congress did not take that approach. Instead, it utilized "off-code" provisions[14] appearing nowhere in the text of IRC to (a) apply the basis calculation formula of Repealed § 1022 to the assets of estates making the Public Law Election and (b) make IRC §§ 1014 and 2001 inapplicable to estates making that election. This is consistent with Congress' approach, as it often enacts off-code provisions in lieu of statutory amendments for laws that are transitory and/or 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).

Furthermore, the text of the Public Law Election acknowledges TRUIRJCA § 301(a)'s complete repeal of Repealed § 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 Congress' intent to allow certain taxpayers to indulge in a legal fiction to "apply" the basis formula of a completely repealed statute (i.e., Repealed § 1022) as if it had not been repealed from the IRC. Likewise, use of the phrase "as though" indicates Congress' intent to not include the basis formula of Repealed § 1022 as part of the IRC. Accordingly, TRUIRJCA § 301(c)'s text confirms that Congress selected to apply the basis rules of Repealed § 1022 and the estate tax repeal provisions of EGTRRA as "off-code" provisions rather than as part of the IRC.

d. TRUIRJCA § 301(e) Does Not Support the Conclusion that the Repeal of § 1022 Was Not Total.

[14] Freestanding laws that are part of the general body of federal tax law but are not part of the statutory text of the IRC are known in tax parlance as "non-code" or "off-code" provisions. *See* Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649, 658 (2006).

In support of its conclusion that Repealed § 1022 was not repealed from the Internal Revenue Code with respect to the Estate, the District Court erroneously presumed that Congress' repeal of Repealed § 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 apply to the IRC for certain taxpayers. (R. at 000239-40.) More specifically, the Memorandum Decision surmises that Repealed § 1022 was repealed from the IRC for all taxpayers other than estates making the Public Law Election. *Id.*

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. 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 provision that sets December 31, 2009 as the 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."

TRUIRJCA § 301(e)'s function as a simple effective date provision rather than an arcane 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" (R. at 000239), is also reinforced by a review of TRUIRJCA. Almost every section[15] of TRUIRJCA that contains amendments to the Internal Revenue Code concludes with an "EFFECTIVE DATE" section. Each of these effective date provisions[16] 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.[17] Clearly, the "except as otherwise provided" language of TRUIRJCA § 301(e) does not suggest that Repealed § 1022's repeal from the IRC was anything short of total for decedents dying after December 31, 2009. Therefore, the District Court erred in holding that Repealed § 1022 was not completely repealed from the IRC and was incorporated into the Idaho Act for purposes of determining the Estate's 2012 taxable income.

2. The Public Law Election Is Not Part of the IRC.

In addition to erroneously concluding that Repealed § 1022 was part of the IRC on January 1, 2012, the District Court also erred in holding that the Public Law Election was incorporated into

[15] Rare exceptions to this general rule include TRUIRJCA § 101(c), which amends IRC § 23 by adding a Sunset Provision that, by its own terms, expressly states the date it will be effective.
[16] *See* TRUIRJCA §§ 301(e), 302(f), 754(e).
[17] *See, e.g.*, TRUIRJCA §§ 402, 701, 702, 760, etc.

the Idaho Act by I.C. § 63-3004's unambiguous definition of the term "Internal Revenue Code." In reaching that conclusion, the District Court makes at least three clear errors. First, as discussed in the next Section IV.C.2.a of this brief, the Reconsidered Decision ignores the plain and unambiguous meaning of I.C. § 63-3004's definition of the IRC. Second, as discussed in the following Section IV.C.2.b of this brief, the Reconsidered Decision misconstrues the interplay among I.C. § 63-3004, IDAPA 35.01.01.010.08 and Internal Revenue Code § 7701(a)(29)'s definition of the Internal Revenue Code. Finally, as discussed in Section IV.C.2.c of this brief, the Reconsidered Decision ignores applicable rules of statutory interpretation.

a. The District Court Ignores the Plain Meaning of I.C. § 63-3004's Definition of the Internal Revenue Code.

As discussed above, this Court has stated that "[i]f the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011). As also noted above, this Court has stated that "the interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *Id.* at 893.

Idaho § 63-3004's definition of the Internal Revenue Code is unambiguous. The phrase "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012" as set forth in the 2012 version of I.C. § 63-3004 refers only to the statutory text originally set forth as the Internal Revenue Title of 1954 as such text had been amended by Congress as of January 1, 2012 (including the 1986 name change to "Internal Revenue Code of 1986"). That statutory text is set forth both in the Statutes At Large (as positive law) and in Title

26 (but not as positive law). Therefore, in applying I.C. § 63-3004's unambiguous definition of the Internal Revenue Code, it must be determined whether or not Congress included the Public Law Election within the IRC's statutory text as that text existed on January 1, 2012.

Importantly, the Record shows there is no disagreement regarding the conclusion that the Public Law Election is not part of the IRC's statutory text. For example, the Commission conceded multiple times that "the verbiage of the election in question was not incorporated within the four corners of the Internal Revenue Code." (R. at 000098.)[18] Likewise, the Reconsidered Decision states that the "TRUIRJCA § 301(c) [Public Law Election] isn't part of the individual statute enacted by Congress and called the 'Internal Revenue Code of 1986'". (R. at 000343, n. 2.) In connection with that acknowledgement, the District Court cited a statement of the Law Revision Counsel of the U.S. House of Representatives, Ralph V. Seep, previously stricken from the record, that "TRUIRJCA § 301(c) [i.e., Public Law Election] isn't part of the Internal Revenue Code of 1986." *Id.*

The Estate's, Commission's, District Court's and Mr. Seep's conclusions are based on clear and unambiguous statutory authority. As explained above, Congress utilizes a clearly defined "stated means" for denoting laws that are to be included within the IRC.[19] For example, § 301(b) of

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[18] *See also* (Reporter's Transcript of Proceedings (hereinafter referred to as the "Transcript"), p. 10.) ("[H]e is just saying, 'Yeah, it is not technically Internal Revenue Code,' and we've already admitted that . . . ."); (Transcript, p. 14.) ("What he is saying is it's not technically Internal Revenue Code. We didn't literally put it in there, and that's something that the Tax Commission admits. It is not literally printed in the four corners of the Internal Revenue Code."); (Transcript, p. 52.) ("From the feds point of view, they don't view this as an amendment. We agree. We've never disputed that. That's not the argument. It's not within the four corners, it's not formally technically codified in the language of the Internal Revenue Code.")

[19] *See* discussion, *supra*, at Section IV.B.2.f.

TRUIRJCA clearly reflects Congress's intent to modify the IRC when it states that "***Section 2055(a) of the Internal Revenue Code of 1986 is amended*** to read as such paragraph would read if section 521(b)(2) of [EGTRRA] had never been enacted." Pub. L. No. 111-312 § 301(b), 124 Stat. 3296. (Emphasis Added).[20] In contrast, TRUIRJCA § 301(c)'s text indicates that Congress had no intention of including the Public Law Election within the statutory text of the IRC. The complete text of TRUIRJCA § 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 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.

Unlike TRUIRJCA § 301(b), TRUIRJCA § 301(c)'s text does not amend any provision of the IRC. Rather, the Public Law Election simply offers estates of decedents dying in 2010 with a

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[20] Other examples of Congress' "stated means" of amending the Internal Revenue Code abound throughout the Statutes at Large. *See, e.g.*, The American Jobs Creation Act of 2004, Pub. L. No. 108–357 § 101(b), 118 Stat. 1418 ("The second sentence of [Internal Revenue Code] section 56(g)(4)(B)(i) ***is amended by striking*** "114 or".) (emphasis added); EGTRRA, Pub. L. No. 107-16 § 101(c)(3), 115 Stat. 38 ("Section 15 [of the Internal Revenue Code] ***is amended by adding*** at the end the following new subsection:") (emphasis added); TRUIRJCA, Pub. L. No. 111-312 § 103(a)(1), 124 Stat. 3296 ("Section 25A(i) [of the Internal Revenue Code] ***is amended by striking*** "or 2010" and inserting ", 2010, 2011, or 2012".) (emphasis added).

federal-level tax election where an estate may calculate federal income by electing to apply a hypothetical version of the IRC that would have existed on January 1, 2010 in the absence of TRUIRJCA's enactment ("may elect to apply [the IRC] as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code [dealing with estate tax] and with respect to property acquired or passing from such decedent"). That hypothetical version of the Internal Revenue Code was not incorporated into the Idaho Act on January 1, 2012. Furthermore, and most critically, the clear language of Section 301(c) indicates that Congress did not include the Public Law Election as part of the statutory text of the IRC. Therefore, the Public Law Election is not included within the statutory text of any version of the IRC including the version that existed on January 1, 2012 that was incorporated into the Idaho Act by I.C. § 63-3004.

A review of the statutory text of the IRC relevant to the calculation of federal income tax associated with the Estate's sale of the Ranch in this case, namely IRC §§ 1014, 1022 and 2001, as published in the United States Code Annotated ("U.S.C.A.") (West) confirms that the Public Law Election has never been part of the statutory text of the IRC. (*See* R. at 000210-18.) The U.S.C.A. compilation of the IRC sets forth a "Credit(s)" (i.e., "Text Amendments") section following the statutory text of each section of the IRC as set forth in Title 26. (*See Id.*) The Credit(s) section for § 1014 (Basis of Property Acquired by a Decedent) indicates the section was amended by § 301(a) of TRUIRJCA. (R. at 000212.) The Credit(s) section of Repealed § 1022 indicates the section was repealed by § 301(a) of TRUIRJCA on December 17, 2010. (R. at 000214.) 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 TRUIRJCA when making an amendment to the IRC. (R. at 000218.) However, TRUIRJCA § 301(c) is not identified in the Credit(s) section of any IRC section as making an amendment to any statutory text of the IRC.

As discussed above, the 2012 version of I.C. § 63-3004 plainly and unambiguously defines the term "Internal Revenue Code" to mean "the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January, 2012." When given its plain and unambiguous meaning, that language only incorporates into the Idaho Act the statutory text of the IRC which is comprised solely of the statutory text of the 1954 Revenue Title and subsequent congressional enactments that specifically amend or add to that statutory text (including the 1986 name change to "Internal Revenue Code of 1986"). Therefore, given the conclusion that the Public Law election was not part of the IRC's statutory text on January 1, 2012, which the Commission does not dispute, it is simply not possible to conclude that the Public Law Election is incorporated into the Idaho Act through I.C. § 63-3004 without ignoring the unambiguous, plain and ordinary meaning of I.C. § 63-3004. For this reason, the District Court's Reconsidered Decision is in error.

b. The District Court Misconstrued the Interplay between I.C. § 63-3004, IDAPA 35.01.01.010.08 and IRC § 7701(a)(29)'s Definition of the IRC.

Even though I.C. § 63-3004 unambiguously incorporates only the IRC's statutory text into the Idaho Act, the Reconsidered Decision misconstrues I.C. § 63-3004 as also incorporating into the Idaho Act statutory notes appended to Title 26 by the Office of the Law Revision Counsel of the U.S. House of Representatives (the "OLRC") that are not part of the IRC. (R. at 000348.)

In its analysis of this issue, the District Court first noted that the Idaho Act defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." (R. at 000334.) Next, it acknowledged that the "Internal Revenue Code," for purposes of the 2012 tax year is defined by the 2012 version of I.C. § 63-3004 as the "Internal Revenue Code of 1986 of the United States, as amended and in effect for the first day of January, 2012." *Id.* Further, the District Court noted that if the term "Internal Revenue Code of 1986" is considered to be a term not defined in the Idaho Act, then IDAPA 35.01.01.010.08 (the "IDAPA definition") adopts the definition of the term as set forth in the Internal Revenue Code. *Id.* Finally, the District Court then recognized that IRC § 7701(a)(29) defines "Internal Revenue Code of 1986" as follows:

> (29) Internal Revenue Code. The term "Internal Revenue Code of 1986" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

Id. From that foundation, the District Court concluded that the words "this title" as used in IRC § 7701(a)(29) refer not simply to the statutory text of the IRC but, rather, to an expansive version of Title 26 which supposedly includes not only the statutory text of the IRC but also the OLRC's statutory notes. (R. at 000342.) Therefore, according to the District Court's convoluted logic, I.C. § 63-3004's unambiguous definition of the IRC incorporates into the Idaho Act significantly more federal tax law than just the separate code of positive law set forth in the statutory text of the IRC as it existed on January 1, 2012.

The District Court's interpretation of the interplay between I.C. § 63-3004, the IDAPA definition and IRC § 7701(a)(29) is erroneous for several reasons. First, as discussed in the next

Section IV.C.2.b.i of this brief, the words "this title" in IRC § 7701(a)(29) refers to the statutory text of the IRC and not to federal tax statutes that are not part of that statutory text. Second, as discussed in the following Section IV.C.2.b.ii of this brief, the District Court's construction of the IDAPA definition renders it in conflict with the plain meaning of I.C. § 63-3004. Third, as discussed in the following Section IV.C.2.b.iii of this brief, there is no authority supporting the District Court's interpretation of IRC § 7701(a)(29) as providing a different definition of the IRC depending on whether IRC § 7701(a)(29) appears as positive law in the Statutes At Large or appears as non-positive law in Title 26.

i. The Words "this Title" in § 7701(a)(29) Refers Only to the Statutory Text of the IRC.

As noted, the Reconsidered Decision cites to the IDAPA definition which provides that "terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meanings as is [sic] assigned to them ***by the Internal Revenue Code*** including Section 7701 relating to definition of terms." IDAPA 35.01.01.010.08 (emphasis added). As also noted, the District Court then focuses on the words "this title" in IRC § 7701(a)(29). The District Court assumes that since IRC § 7701(a)(29) happens also to be published in Title 26 the words "this title" in § 7701(a)(29) must refer to Title 26. Based on that assumption, the District Court concludes that that IRC § 7701(a)(29) defines the term "Internal Revenue Code of 1986" as being comprised of not just the statutory text of the IRC but also statutory notes appended to Title 26 by the OLRC. As a result of its misinterpretation of the words "this title" in IRC § 7701(a)(29), the District Court grossly misconstrued the meaning of IRC § 7701(a)(29) and the IDAPA definition.

As discussed above at Section IV.B.2.b of this brief, IRC § 7701(a)(29) was originally enacted by Congress as part of the Internal Revenue Title of 1954. The purpose of § 7701(a)(29) of the Internal Revenue Title of 1954 was to define the Internal Revenue Title of 1954 as the "Internal Revenue Code of 1954." As also explained at Section IV.B.2.d of this brief, the Internal Revenue Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988 replaced IRC § 7701(a)(29)'s reference to year "1954" with a reference to the year "1986". Importantly, no changes to the words "this title" as they appear in IRC § 7701(a)(29) have been made since § 7701(a)(29) was enacted by Congress as part of the Internal Revenue Title of 1954. Thus, the words "this title," as they appear in IRC § 7701(a)(29), clearly reference the Internal Revenue Title of 1954 as such title has been specifically amended by Congress (including the 1986 name change to the IRC). Therefore, the District Court's conclusion that "this title" refers to Title 26 and statutory notes appended thereto rather than merely the IRC's statutory text is clearly erroneous.

Moreover, the District Court made a second inaccurate assumption when interpreting the IDAPA definition. In its construction of IRC § 7701(a)(29), the District Court assumes that the IDAPA definition requires undefined terms to be defined by § 7701(a) as set forth in Title 26, rather than by § 7701(a) as set forth in the Internal Revenue Code. (R. at 000348.) Ignoring the plain language of the IDAPA definition, the District Court erroneously consults the § 7701(a)(29) definition set forth in Title 26 rather than the IRC § 7701(a)(29) definition set forth in the Internal Revenue Code of 1986 as published in the Statutes At Large. *Id.* The clear language of the IDAPA definition, however, directs undefined terms to "have the same meanings as is [sic] assigned to

them ***by the Internal Revenue Code*** including Section 7701" rather than a meaning assigned to them by Section 7701 of Title 26. IDAPA 35.01.01.010.08 (emphasis added).[21] By directing that terms "shall have the same meanings as is [sic] assigned to them ***by the Internal Revenue Code***" the IDAPA definition again confirms that the IRC is the proper context for interpreting the words "this title" and further confirms that the words "this title" as set forth in IRC § 7701(a)(29) are properly interpreted as a reference to the statutory text of the IRC rather than a broad reference to Title 26 and the OLRC's statutory notes.

ii. The District Court's Interpretation of the IDAPA Definition Renders It in Conflict with the Plain Meaning of I.C. § 63-3004.

As discussed above, the plain and ordinary meaning of I.C. § 63-3004's definition of the Internal Revenue Code incorporates into the Idaho Act only the statutory text of the IRC. However, as also discussed above, the District Court misconstrues the IDAPA definition as incorporating into the Idaho Act not only the statutory text of the IRC but also the OLRC's notes. If the District Court's construction of the IDAPA definition were correct, therefore, the IDAPA definition of the IRC is invalid because it contradicts the plain and unambiguous meaning of I.C.

[21] As noted above at Section IV.B.2.e and below at Section IV.C.2.b.iii, the definition of "Internal Revenue Code of 1986" as set forth in § 7701(a)(29) should be the same whether or not one is reading the text of that section from the United States Code or from the Statutes At Large. In both instances, the word "title" as used in § 7701(a)(29) is properly construed as a reference to the statutory text of the IRC. As noted below at Section IV.C.2.b.iii, however, the District Court's rather bizarre formulation gives meanings to § 7701(a)(29) that vary depending on whether the section appears in the Statutes At Large or Title 26.

§ 63-3004's definition of the Internal Revenue Code which provides that such code is comprised of only the statutory text of the IRC as it existed on January 1, 2012.

Although the Commission has authority to make rules implementing the Idaho Act, including the promulgation of the IDAPA definition, the Commission "cannot validly subvert the legislation by promulgating contradictory rules." *Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 814 (2001) (*abrogated on other grounds by Ada County Bd. Of Equalization v. Highlands Inc.*, 141 Idaho 202 (2005)). Furthermore, this Court has stated that it "will not enforce a regulation that is, in effect, a rewriting of the statute." *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 680 (1990). Therefore, assuming *arguendo* that the District Court's construction of the IDAPA definition is correct, that definition should not be enforced by this Court because it would be in direct conflict with I.C. § 63-3004's clear and unambiguous definition of 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." As discussed above, that definition of the Internal Revenue Code does not incorporate into the Idaho Act provisions of federal tax law that are not part of the statutory text of the IRC as it existed on January 1, 2012.

iii. The District Court's Interpretation of § 7701(a)(29) as Providing Definitions of the IRC that Vary Depending on the Volume in which It Is Published Is Not Supported by any Authority and Is Simply Wrong as a Matter of Statutory Construction.

As noted, the District Court interprets the words "this title" as they appear in § 7701(a)(29) to be a reference to Title 26 and statutory notes appended to Title 26 by the OLRC. As also noted,

the District Court construes the words "this title" in that way because § 7701(a)(29) appears as part of Title 26 in published volumes of the United States Code. Under the District Court's formulation, the meaning of the words "this title" is derived from and is dependent on the volume in which § 7701(a)(29) appears. Pursuant to the District Court's logic, therefore, the meaning of the words "this title" in IRC § 7701(a)(29) mutates from a reference to "the statutory text of the IRC", when § 7701(a)(29) is set forth in the Statutes At Large, into a reference to "Title 26 and the OLRC's notes", when § 7701(a)(29) is set forth in Title 26.

The Estate has found no authority to support varying § 7701(a)(29)'s definition of the IRC depending on whether § 7701(a)(29) appears as positive law in the Statutes At Large or appears as non-positive law in Title 26. Further, neither the District Court nor the Commission has identified any authority supporting that interpretation. Indeed, such an interpretation is patently absurd as relevant federal authority clearly recognizes that the sections of the IRC are identical to the sections of Title 26. As noted above, the note titled "Title 26, Internal Revenue Code" following 1 U.S.C. 204 states that "the Sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code." Likewise, as noted by the court in *O'Boyle v. United States*, "the Internal Revenue Code and Title 26 are identical, even though they are distinct . . . ." 2007 WL 2113583, *1 (S.D. Fla. 2007). In other words, § 7701(a)(29) provides the same definition of the IRC regardless of whether § 7701(a)(29) appears in the Statutes At Large or the United States Code.

Because the sections of the IRC are identical to the sections of Title 26, § 7701(a)(29)'s definition does not change depending on whether § 7701(a)(29) is set forth in the Statutes At Large

or Title 26. It is important to once again recognize that the words "this title" as used in § 7701(a)(29) are properly considered to be a reference only to the statutory text of the Revenue Title of 1954 as such title has been specifically amended by Congress (including the 1986 name change to the IRC) and that the identical statutory text is set forth in Title 26 exclusive of statutory notes. Accordingly, § 7701(a)(29) sensibly provides the same definition of the IRC regardless of § 7701(a)(29)'s location in either the Statutes At Large or the United States Code.[22] In contrast, the District Court's rather bizarre interpretation results in § 7701(a)(29) providing two very different definitions of the IRC depending on the volume in which § 7701(a)(29) appears.

c. The Reconsidered Decision Ignores Applicable Rules of Statutory Interpretation.

If the Idaho Legislature had intended to incorporate off-code provisions, such as the Public Law Election, into 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. That canon of statutory construction, known as *expressio unius est exclusio alterius*, is discussed below in the next Section IV.C.2.c.i of this brief. The immediately following Section IV.C.2.c.ii of this brief discusses how legislatures that truly intend to incorporate off-code provisions of federal tax law into their tax acts do so explicitly. Finally, Section IV.C.2.c.iii of this brief discusses the rule of

[22] Consistent with this construction, Idaho Courts treat the sections of the Internal Revenue Code and Title 26 identically and interchangeably. *See examples at* (R. at 000322, n. 9.)

statutory construction requiring tax statutes to be construed as favorably as possible to the taxpayer and strictly against the Commission.

i. The District Court's Construction of I.C. § 63-3004 Violates the Canon of Statutory Construction Providing that a Reference to Specific Provisions Excludes References to Other Provisions Not Mentioned.

The above- referenced canon of statutory construction, *expressio unius est exclusio alterius*, was applied by this 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 I.C. §§ 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). This 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. It is certainly reasonable to assume that the legislature knew federal law provides that the IRC is comprised only of the statutory text of the

Internal Revenue Title of 1954, as amended, when it precisely defined the term "Internal Revenue Code" in the 2012 version of I.C. § 63-3004, as "***the Internal Revenue Code of 1986*** of the United States, as amended, and in effect on the first day of January, 2012."

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 IRC, 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 IRC when it incorporated the IRC into the Idaho Act on February 6, 2012.

ii. If the Idaho Legislature Intended to Incorporate Provisions of Federal Tax Law into the Idaho Act Other than Just the IRC, It Would Have Done So Explicitly.

As discussed above, the Idaho Legislature used clear and unambiguous language to describe precisely which federal statues it incorporated into the Idaho Act for the purpose of

determining a taxpayer's Idaho taxable income. In I.C. § 63-3004, the Legislature simply incorporated just "***the Internal Revenue Code of 1986*** of the United States, as amended, and in effect on the first day of January, 2012." The Idaho Legislature has demonstrated that it understands that the provisions of federal tax law are comprised of more than just IRC statutory text and has also clearly demonstrated that it will refer to such other provisions when it intends to incorporate them into Idaho law. For example, in I.C. § 50-2801(3) the term "Code" is defined as the "Internal Revenue Code of 1986, as amended, and any related treasury regulations." Likewise, I.C. § 50-8-103(1)(e) refers to "***statutes and regulations of the United States internal revenue service*** in order to more efficiently allocate exemptions or to achiever qualification for deductions, elections, and other tax requirements including, ... for the ***estate tax marital deduction permitted by federal law***, ... the qualification of any gift thereunder as a qualified conservation easement ***as permitted by federal law***, or the qualification of any gift for the ***charitable estate tax deduction permitted by federal law*** . . . ." (Emphasis added).

Similarly, state legislatures that desire to incorporate provisions of federal law that are not part of the IRC 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*** . . . ." Colo. Rev. Stat. §§ 39-22-103; 39-22-104 (emphasis added). Accordingly, Colorado incorporated both the IRC, which

the statutory footnote to § 39-22-103 defines as "26 U.S.C.A. § 1 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). Unlike Colorado, Minnesota, and Utah, the Idaho Legislature did not incorporated federal off-code provisions such as the Public Law Election and Repealed § 1022 into the Idaho Act.

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 IRC by reference. *See, e.g.*, Cal. Rev. & Tax. Code § 18031 (incorporating the IRC statutes for determining gain and loss on disposition of property, such as § 1041). In 1984, Cal. Rev. & Tax. 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 IRC § 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 IRC § 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. Idaho did not follow the examples of states like California, Colorado, Minnesota, and Utah by expressly incorporating off-code provisions into the Idaho Act. Thus, the Idaho Legislature has indicated its intention to not incorporate off-code provisions into the Idaho Act.

iii. The District Court Violates the Canon of Construction Providing that Tax Statutes Be Construed in the Taxpayer's Favor and Strictly against the Commission.

Even if one accepts, *arguendo*, the District Court's construction of I.C. § 63-3004's unambiguous definition of the "Internal Revenue Code" as incorporating the Public Law Election into the Idaho Act, 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 statutory text of the IRC, which is consistent with the plain and unambiguous meaning of the words "Internal Revenue Code of 1986". The second option is the far less plausible interpretation which expands I.C. § 63-3004's definition of "Internal Revenue Code of 1986" to also include other federal tax statutes that are not

part of the statutory text of the IRC. Therefore, 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)).

D. The Estate's Interpretation of I.C. § 63-3004 Is Consistent With Sound Tax Policy.

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. There is no reason to believe that the Idaho Legislature would have intended to incorporate into the Idaho Act an off-code tax break benefiting LSU or UT football fans.

In this case, 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 provides 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 IRC § 1014 stepped-up basis. No *quid pro quo* exists at the state level because Idaho does not impose estate taxes regardless of whether the Estate receives an IRC § 1014 stepped-up basis. Therefore, it should be apparent that the Idaho Legislature did not intended to impose on the Estate (or any other decedent's estate) a confiscatory state income tax penalty in the form of a loss of the valuable income tax benefit provided by an IRC § 1014 stepped-up basis simply because the Estate elected to forego the payment of federal (but not state) estate taxes.

V. CONCLUSION

Based on the foregoing, it is clear that the Idaho Act requires the Estate to calculate its I.C. § 63-3011B taxable income pursuant to the Internal Revenue Code of 1986 as it existed on January 1, 2012 which includes § 1014 of such code. Likewise, it is clear that neither Repealed § 1022 nor the Public Law Election were part of the Internal Revenue Code of 1986 as it existed on January 1, 2012. Therefore, the Estate respectfully asks this Court to reverse the District Court's Memorandum Decision granting the Commission's Motion for Summary Judgment and denying the Estate's Motion for Partial Summary Judgment, to reverse the District Court's Reconsidered decision denying the Estate's Motion for Reconsideration, and to remand to the District Court with instructions to enter judgment in the Estate's favor for a refund of taxes paid by the Estate in an amount to be determined at trial after recalculation of the Estate's Idaho taxable income based on the amount realized on the sale of the Ranch reduced by the Estate's income tax basis in the Ranch determined pursuant to

IRC § 1014. The Estate further requests an award of costs and attorney fees under I.C. § 63-3049(d) and Rules 40 and 41 of the Idaho Appellate Rules.

DATED this 1st day of June, 2016.

AHRENS DEANGELI LAW GROUP LLP

By: _____
Nicholas S. Marshall, ISBN 5578
Counsel for Appellant, the Estate of Zippora Stahl, Deceased

APPENDIX A

INTERNAL REVENUE CODE OF 1954

68A Stat. 3, Approved August 16, 1954

83d CONGRESS
2d Session

H. R. 8300

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 1), 1954
Read twice and referred to the Committee on Finance

AN ACT

TO REVISE THE INTERNAL REVENUE LAWS
OF THE UNITED STATES

Original bill as introduced

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

30995

83D CONGRESS
2D SESSION

H. R. 8300

IN THE SENATE OF THE UNITED STATES

MARCH 23, (legislative day, MARCH 1), 1954

Read twice and referred to the Committee on Finance

AN ACT

To revise the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) CITATION.—

(1) The provisions of this Act set forth under the heading "Internal Revenue Title" may be cited as the "Internal Revenue Code of 1954".

(2) The Internal Revenue Code enacted on February 10, 1939, as amended, may be cited as the "Internal Revenue Code of 1939".

(b) PUBLICATION.—This Act shall be published as volume 68A of the United States Statutes at Large, with an appendix and index; but without marginal references. The date of enactment, bill number, public law number, and chapter number, shall be printed as a headnote.

(c) CROSS REFERENCE.—For saving provisions, effective date provisions, and other related provisions, see chapter 80 (sec. 7801 and following) of the Internal Revenue Code of 1954.

(d) ENACTMENT OF INTERNAL REVENUE TITLE INTO LAW.—The Internal Revenue Title referred to in subsection (a) (1) is as follows:

(1)

42001—54——1

INTERNAL REVENUE TITLE

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter A—Determination of Tax Liability

PART I—TAX ON INDIVIDUALS

SEC. 1. TAX IMPOSED.

(a) RATES OF TAX ON INDIVIDUALS.—A tax is hereby imposed for each taxable year on the taxable income of every individual. The amount of the tax shall be determined in accordance with the following table: Secs. 11 and 12 (a) (1), I. R. C.

If the taxable income is:	The tax is:
Not over $2,000	20% of the taxable income.
Over $2,000 but not over $4,000	$400, plus 22% of excess over $2,000.
Over $4,000 but not over $6,000	$840, plus 26% of excess over $4,000.
Over $6,000 but not over $8,000	$1,360, plus 30% of excess over $6,000.
Over $8,000 but not over $10,000	$1,960, plus 34% of excess over $8,000.
Over $10,000 but not over $12,000	$2,640, plus 38% of excess over $10,000.
Over $12,000 but not over $14,000	$3,400, plus 43% of excess over $12,000.
Over $14,000 but not over $16,000	$4,260, plus 47% of excess over $14,000.
Over $16,000 but not over $18,000	$5,200, plus 50% of excess over $16,000.
Over $18,000 but not over $20,000	$6,200, plus 53% of excess over $18,000.
Over $20,000 but not over $22,000	$7,260, plus 56% of excess over $20,000.
Over $22,000 but not over $26,000	$8,380, plus 59% of excess over $22,000.
Over $26,000 but not over $32,000	$10,740, plus 62% of excess over $26,000.
Over $32,000 but not over $38,000	$14,460, plus 65% of excess over $32,000.
Over $38,000 but not over $44,000	$18,360, plus 69% of excess over $38,000.
Over $44,000 but not over $50,000	$22,[illegible]6, plus 72% of excess over $44,000.
Over $50,000 but not over $60,000	$26,820, plus 75% of excess over $50,000.
Over $60,000 but not over $70,000	$34,320, plus 78% of excess over $60,000.
Over $70,000 but not over $80,000	$42,120, plus 81% of excess over $70,000.
Over $80,000 but not over $90,000	$50,220, plus 84% of excess over $80,000.
Over $90,000 but not over $100,000	$58,620, plus 87% of excess over $90,000.
Over $100,000 but not over $150,000	$67,320, plus 89% of excess over $100,000.
Over $150,000 but not over $200,000	$111,820, plus 90% of excess over $150,000.
Over $200,000	$156,820, plus 91% of excess over $200,000.

The tax consists of a normal tax of 3 percent of the taxable income and a surtax equal to the amount determined in accordance with the above table minus the normal tax. The tax shall in no event exceed 87 percent of the taxable income for the taxable year. Sec. 12 (f), I. R. C.

(b) CROSS REFERENCE.—

For definition of "taxable income", see section 63.

CHAPTER 79—DEFINITIONS

Sec. 7701. Definitions.

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) PARTNERSHIP AND PARTNER.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization. A person shall be recognized as a partner for income tax purposes if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(3) CORPORATION.—The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) DOMESTIC.—The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) FOREIGN.—The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) FIDUCIARY.—The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) STOCK.—The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) SHAREHOLDER.—The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) UNITED STATES.—The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(10) STATE.—The term "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(12) DELEGATE.—The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) COMMISSIONER.—The term "Commissioner" means the Commissioner of Internal Revenue.

(14) TAXPAYER.—The term "taxpayer" means any person subject to any internal revenue tax.

Sec. 3797 (a) (13), I. R. C.

(15) MILITARY OR NAVAL FORCES AND ARMED FORCES OF THE UNITED STATES.—The term "military or naval forces of the United States" and the term "armed forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

Sec. 3797 (a) (10), I. R. C.

(16) WITHHOLDING AGENT.—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, 1451, or 1461.

Sec. 3797 (a) (17), I. R. C.

(17) HUSBAND AND WIFE.—As used in sections 71, 215, 682, and the last sentence of section 152, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

Sec. 3797 (a) (18), I. R. C.

(18) INTERNATIONAL ORGANIZATION.—The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

Sec. 3797 (a) (19), I. R. C.

(19) DOMESTIC BUILDING AND LOAN ASSOCIATION.—The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.

Sec. 3797 (a) (20), I. R. C.

(20) EMPLOYEE.—For the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

New.

(21) LEVY.—The term "levy" includes the power of distraint and seizure by any means.

New.

(22) ATTORNEY GENERAL.—The term "Attorney General" means the Attorney General of the United States.

Sec. 3 (a), I. R. C.

(23) TAXABLE YEAR.—The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary or his delegate, the period for which such return is made.

Sec. 3 (b), I. R. C.

(24) FISCAL YEAR.—The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

Sec. 3 (c), I. R. C.

(25) PAID OR INCURRED, PAID OR ACCRUED.—The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) TRADE OR BUSINESS.—The term "trade or business" includes the performance of the functions of a public office. Sec. 41 (d), I. R. C.

(27) TAX COURT.—The term "Tax Court" means the Tax Court of the United States.

(28) OTHER TERMS.—Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions. Rev.

(29) INTERNAL REVENUE CODE.—The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(b) INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) CROSS REFERENCES.—

(1) OTHER DEFINITIONS.— Sec. 2(a) (d), I. R. C.

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.
(4) Officer, section 1.
(5) Oath as including affirmation, section 1.
(6) County as including parish, section 2.
(7) Vessel as including all means of water transportation, section 3.
(8) Vehicle as including all means of land transportation, section 4.
(9) Company or association as including successors and assigns, section 5.

(2) EFFECT OF CROSS REFERENCES.—

For effect of cross references in this title, see section 7806 (a).