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

IN THE SUPREME COURT OF THE STATE OF IDAHO

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,

Appellant,

vs.

IDAHO STATE TAX COMMISSION,

Respondent.

Supreme Court Docket No. 43832
District Court No. CVOC-2015-00106

RESPONDENT IDAHO STATE TAX COMMISSION'S BRIEF

Appeal from the Fourth District Court, Ada County, State of Idaho
Honorable District Judge Jason D. Scott, presiding.

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STATEMENT OF THE CASE

I. Nature of the case

Like a majority of states, Idaho has adopted an income tax system based on what is called "tax base conformity." This system is one where Idaho tax law piggybacks on the federal system. In particular, Idaho tax law requires taxpayers to use their federal sum of taxable income reported to the Internal Revenue Service as their starting point when filling out their Idaho tax return. Specifically, Idaho law uses the federal definition of income as the starting point for calculating Idaho taxable income. From there, Idaho law provides for certain Idaho-specific additions and subtractions to one's taxable income.

The main feature of Idaho's tax base conformity system is that it uses the federal sum of taxable income as its starting point. Stated another way, what you report on your federal return as your taxable income, is what you start with when you report to Idaho. And the only deviations from one's federal taxable income are Idaho-provided additions and subtractions.

The question for decision in this appeal is clear and straightforward: can a taxpayer report a *different* amount of taxable income on its Idaho tax return than it did on its federal return? We say that a taxpayer cannot. The District Court agreed with the Idaho State Tax Commission ("Commission"), and the Judgment below should be affirmed.

Before wading into the issues in this case, and as a point of emphasis, we note that the heart of this case can be decided on the basic principles of statutory interpretation. Yes, the context of the case is the Idaho Income Tax Act and various federal tax statutes. But the legal issue to be resolved does not involve complicated tax calculations or difficult accounting formulas. Nor does it involve arcane legislative history. Rather, the legal issue is to be solved by

basic statutory interpretation—by giving effect to the legislative intent and purpose of the pertinent statutes.

In this case, we don't have to guess the intent of the legislature; we know for certain, because the legislature included an entire section in the Idaho Income Tax Act devoted to explaining that its intent is to have Idaho follow a tax base conformity system. Specifically, the legislature's intent is that the taxable income reported by a taxpayer to Idaho be the identical sum reported to the IRS, subject only to modifications contained in Idaho law. This legislative declaration of intent will be referred to throughout this brief, and is found in Idaho Code § 63-3002 ("Section 3002").

The taxpayer here—the Estate of Zippora Stahl ("Estate")—has reported one sum as its taxable income for tax year 2012 on its federal tax return, and attempted to report a *different* sum on its Idaho tax return for the same taxable year. By doing it this way, the Estate is attempting to get a tax refund of more than $1 million dollars. The Idaho State Tax Commission rejected the Estate's attempt to file a disparate return.

To quote the District Court below, the Estate is trying to be "clever." The Estate is attempting to exploit a perceived loophole in the law in order to gain a windfall. But, as will be shown, the loophole doesn't actually exist. And as stated above, any attempt to report disparate taxable income sums is contrary to Idaho law. So, the Estate should be required to conform to Idaho income tax law, like all other Idaho taxpayers. The Estate cannot legally report one set of numbers on its federal tax return, and another set on its Idaho tax return.

The District Court should be affirmed.

II. Course of Proceedings

The Commission substantially agrees with the "Course of Proceedings" set out by the Estate in its Appellant's Brief. App. Br., p. 8. The Commission will refrain from repeating substantially agreed-upon facts here, consistent with Rule 35, Idaho Appellate Rules.

However, because this case so completely revolves around whether the District Court got its reasoning right in its two decisions below, for ease of reference here, the Commission includes the two District Court decisions being appealed in this case, in the Appendix to this brief.

Those two Decisions are denominated in the Appendix as Document #1: Memorandum Decision and Order on Cross-Motions for Summary Judgment (July 31, 2015) ("Memo. Dec."), R., pp. 229-243; and Document #2: Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment (November 16, 2015) ("Memo. Recon."). R., pp. 330-358.

III. Statement of Facts

The parties to this case agreed on the relevant facts in this case below. *See*, Stipulation of Facts, R., pp. 44-47. The Commission substantially agrees with the facts set out by the Estate in its Appellant's Brief. App. Brief, pp. 8-10. (A more thorough and comprehensive statement of the facts is contained in the District Court's Decision below. Memo. Dec., R., pp. 229-243.) However, the Commission cannot agree with two (2) matters in the Estate's iteration of the facts in its brief.

First, this Court should not give any weight to the nicknames given to the key statutes by the Estate. Those two statutes are: (1) Internal Revenue Code § 1022; and (2) TRUIRJCA § 301(c) (Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010,

Pub. L. No. 111-312, 124 Stat. 3296 ("TRUIRJCA"). In their briefing before the District Court, the parties both referred to these two statutes by their proper statutory designation. Now, in its Appellate Brief, the Estate attempts to re-characterize its argument by adopting a new naming scheme for these sections. Instead of citing to the statutes by their normal designations, the Estate refers to Internal Revenue Code § 1022 as "Repealed § 1022," and refers to TRUIRJCA § 301(c) as "Public Law Election."

But the questions of whether Internal Revenue Code § 1022 was "repealed," and whether the Estate's choice to use a particular method of calculating its basis was an "election" pursuant to TRUIRJCA § 301(c), are issues which are at the very heart of the legal matter in this case. These new designations represent legal arguments and are not *factual*, and therefore, the Commission cannot agree to them. Hereafter, the Commission will refer to the statutes by their proper designations: Internal Revenue Code § 1022; and (2) TRUIRJCA § 301(c).

Second, the Estate's Statement of Facts improperly adds a *new* fact not in the record. Specifically, the Estate says that its first Idaho tax return was filed "mistakenly." App. Brief, p. 9. However, the record doesn't support this. Neither does the parties' Stipulation of Facts. R., pp. 44-47. To the contrary, the chronology of events strongly suggests that the Estate deliberately filed its initial Idaho return with a taxable income number that was identical to its federal taxable income sum. Only thereafter did the Estate realize that it could reap a financial benefit by filing an *amended* Idaho return with a different fictional federal taxable income sum, in order to get a tax refund. So, it would be incorrect for the Commission to agree to this new statement by the Estate, when it is not in the record that the Estate's first filing was a mistake, and when both the Commission and the District Court agree that the first filing was legally correct.

ISSUES ON APPEAL

The outcome of this appeal may be determined by the resolution of a single issue:

1. Did the District Court correctly hold that Idaho law requires the Estate to report the identical sum of taxable income on its Idaho return that it reported on its federal return?

There are two ancillary issues raised by the Estate, which may be decided by this Court—and which the Commission addresses in this brief—but which are not vital to the resolution of the case. If this Court affirms the District Court on the first issue, it need not reach the remaining issues, which are:

2. Did the District Court correctly hold that the Estate determined its federal taxable income pursuant to Section 1022 of the Internal Revenue Code?

3. Did the District Court correctly hold that TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act?

ARGUMENT

I. Standard of Review

This Court's review of an appeal from the District Court's grant of summary judgment is upon the same standard as employed by the District Court. *Gracie, LLC v. Idaho State Tax Comm'n*, 149 Idaho 570, 572, 237 P.3d 1196, 1198 (2010) (internal citation omitted). Pursuant to the Rule 56(c), Idaho Rules of Civil Procedure, summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Idaho R. Civ. P. 56(c).

This Court "freely reviews" the record before the District Court "to determine whether either side was entitled to judgment as a matter of law." *Gracie*, 149 Idaho at 572, 237 P.3d at 1198. "If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review." *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006) (internal citation omitted).

II. The District Court correctly held that the Idaho Income Tax Act requires the Estate to report the identical sum of taxable income on its Idaho return that it reported on its federal return.

The District Court properly followed the clear intent and meaning of the Idaho Income Tax Act, as well as this Court's case law, when it determined that the Estate must report the identical sum of taxable income to Idaho that it did to the Internal Revenue Service. It correctly held that the only adjustments to a taxpayer's federal taxable income are those specifically provided for by Idaho law. The District Court was also correct when it concluded that the Estate is trying to find a "clever" way to dodge this important principle of the Idaho Income Tax Act by making an adjustment not provided for by Idaho law. Memo. Recon., R., p. 349.

The Estate's reasoning goes like this: (1) Idaho's Income Tax Act instructs taxpayers to use "taxable income as determined under the Internal Revenue Code" as the starting point to compute "Idaho taxable income" (*see* I.C. §§ 63-3011B & 3011C); (2) for the year at issue, Idaho Code § 63-3004 states that "[t]he term 'Internal Revenue Code' means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012;" and (3) "Internal Revenue Code" as used in Idaho Code § 63-3004 must mean that only the actual text in the printed version of the Internal Revenue Code is incorporated for that year.

The Estate reasons that anything not printed in the actual statutory text of the Internal Revenue Code for the applicable year does not fit within the meaning of "Internal Revenue Code of 1986." So, because TRUIRJCA § 301(c) and IRC § 1022 do not appear in the actual printed text of the Internal Revenue Code for that year (they only appear as statutory notes in Title 26 of the United States Code), then Idaho law ignores their existence and the Estate must calculate its taxable income without regard to IRC § 1022. The Estate argues that, for Idaho purposes only, it must recalculate its taxable income using a totally different section of the Internal Revenue Code (IRC § 1014).

At the time the Estate filed its original tax returns with the IRS and Idaho, it made a choice to elect, under TRUIRJCA § 301(c), to apply IRC § 1022 for calculating the taxable gain on the sale of the Chino property; this choice meant that the Estate would not have to pay the federal *estate* tax, but instead would pay additional *income* tax to the IRS and to the Idaho State Tax Commission. Later, the Estate came back to Idaho and filed an *amended* tax return which now excluded the income that had been included by the Estate's earlier choice to apply Internal Revenue Code § 1022. Even though the Estate elected to use Internal Revenue Code § 1022 for purposes of calculating its federal taxable income, the Estate argues that its election and the

resulting calculation of federal taxable income reported to the IRS should be ignored when computing its Idaho taxable income. This is inconsistent and contrary to Idaho law.

In sum, the Estate's entire argument rides on the assertion that the definition of "Internal Revenue Code of 1986" in Idaho Code § 63-3004 means that one only looks at the *actual statutory text* in the printed version of the Internal Revenue Code for that year. (To quote the Estate, "Internal Revenue Code of 1986" means "*only the statutory text* of the Internal Revenue Code." App. Brief, pp. 11, 13-15, 17, 22 (emphasis added).) This reading adds words to the statute that are not actually there. It also overlooks that the applicable term at issue is not just the "Internal Revenue Code of 1986" but the "Internal Revenue Code of 1986 . . . *in effect*." In any case, the Estate argues that one should ignore all other provisions of federal law that might have been used in calculating the taxpayer's federal taxable income.

However, as discussed below, in light of Idaho Code § 63-3002, the plain text of Idaho Code § 63-3004 is unambiguous in its requirement that the Estate report the same amount of taxable income to Idaho that it reported to the IRS.

As the District Court held, the Estate's argument reflects "highly skilled lawyering." Memo. Recon., R., p. 349. But the Estate asks the Court "to recognize a loophole—one that just isn't there—in the well-established rule equating Idaho taxable income with federal taxable income, except as specifically provided in the Idaho Income Tax Act. The Estate's arguments don't carry the day for that reason." *Id.*

The District Court's holding is legally correct and should be upheld by this Court.

A. The Estate cannot ignore the well-established principle of the Idaho Income Tax Act known as "tax base conformity," that taxpayers are to report taxable income to Idaho equal to their federal taxable income.

In the words of the District Court, the Idaho Income Tax Act contains a "clear legislative mandate that federal taxable income and Idaho taxable income be equal." Memo. Recon., p. 349. This mandate is clearly expressed in statute and supported by this Court's decisions. The Estate would like to persuade this Court that there is a loophole to this well-established principle. That is not so. The Estate's starting Idaho taxable income amount must be the same as the federal taxable income that the Estate reported on its federal tax return.

The clear legislative mandate for tax base conformity in the Idaho Income Tax Act is in the remarkably detailed declaration in the preamble to the Act, Idaho Code § 63-3002:

> **Declaration of intent.** It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that *the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law*; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, . . . basis and other pertinent provisions . . . , resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived . . . . All of the foregoing is subject to modifications in Idaho law . . . .

Idaho Code § 63-3002 (emphasis added). Thus, the legislature's intent is clear: calculating taxable income to be reported to Idaho, a taxpayer's starting point must be an identical sum to the federal taxable income that the taxpayer reported on its federal tax return. This statement of legislative intent informs all of the remaining sections of the Idaho Income Tax Act, as it is the courts' duty to give effect to legislative intent by reading the *entire* act. *St. Luke's Magic Valley*

Reg'l Med. Ctr., Ltd. v. Bd. of Cty. Comm'rs of Gooding Cty., 149 Idaho 584, 588, 237 P.3d 1210, 1214 (2010).

A court's "primary duty in interpreting a statute is to give effect to the legislative intent as ascertained from the statutory language." *Ag Serv. of Am., Inc. v. Kechter ex rel. Kechter*, 137 Idaho 62, 64, 44 P.3d 1117, 1119 (2002). A court is to give effect to "the clearly expressed intent of the legislative body. . . ." *Idaho Youth Ranch, Inc. v. Ada Cty. Bd. of Equalization*, 157 Idaho 180, 184, 335 P.3d 25, 29 (2014) (internal quotations omitted). And a court is to interpret a statute "in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute." *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990) (internal citation omitted).

This Court has repeatedly given effect to the legislature's clearly expressed intent in Section 3002, that the starting point for Idaho taxable income is "federal taxable income" and it is to be "identical" to the amount reported to the Internal Revenue Service. Indeed, this Court has held that "Idaho's taxation scheme *mirrors* that of federal law." *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 846, 230 P.3d 734, 738 (2010) (emphasis added). While Section 3002 "does not incorporate by reference all provisions of the federal Internal Revenue Code into Idaho law," *Lockheed Martin Corp. v. Idaho State Tax Com'n*, 142 Idaho 790, 796, 134 P.3d 641, 647 (2006), "[o]ur legislature intended the provisions of the Idaho Income Tax Act to be *identical* to the Internal Revenue Code, in so far as possible. I.C. § 63-3002." *Parsons v. Idaho State Tax Comm'n, Dep't of Revenue & Taxation*, 110 Idaho 572, 575, 716 P.2d 1344, 1347 (Ct. App. 1986) (emphasis added).

Moreover, this Court has held that the Idaho Income Tax Act is largely based on the idea that "Idaho taxable income is the same as federal taxable income" except only where Idaho law

provides for Idaho-specific additions or subtractions to the federal taxable income. *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996) (emphasis added).

Thus, this Court has recognized that the legislature's intent is that the Commission administer and enforce a state tax system built upon the principle that taxpayers are to use identical figures as their Idaho taxable income starting point as they used in their federal return. The Estate would like to avoid this principle by ignoring it. Section 3002 is one of only a very few distinct statements of legislative intent in the Idaho Code, and is key to resolving this matter. But the Estate never once independently quotes this statute in its brief. However, this omission is not surprising as the Estate's argument cannot survive unless Section 3002's explicit declaration of intent is completely ignored. This is not correct, and the Estate must use the same basis and federal taxable income in its Idaho tax return as it did in its federal return.

B. The Estate may not make any additions or subtractions to its federal taxable income except as specifically provided by Idaho law.

The Estate is required to report its Idaho taxable income equal to its federal taxable income, subject only to Idaho-provided additions and subtractions. That term, "Idaho taxable income," is defined in the Idaho Income Tax Act as "federal taxable income as determined under the Internal Revenue Code," I.C. § 63-3011B, "as modified pursuant to the Idaho adjustments specifically provided in [Idaho's income tax statutes.]." I.C. § 63-3011C. Thus, "Idaho taxable income" is identical to federal taxable income, excepting *only* Idaho-specific statutes that provide specific additions or subtractions to federal taxable income.

The Estate argues that the meaning of Idaho Code § 63-3004 means that only those items "within the statutory text of the Internal Revenue Code" are incorporated in Idaho law, and that

this allows them to recalculate their federal taxable income for Idaho reporting purposes without regard to any "off-code" provisions.[1]

However, as the District Court noted, the meaning of I.C. § 63-3004 is especially clear in light of I.C. §§ 63-3002 and 63-3011C, "both of which plainly say that Idaho taxable income is equal to federal taxable income unless *Idaho law* provides for a modification or adjustment to federal taxable income." Memo. Dec., R., p. 241 (emphasis in original). Further, as the District Court correctly held, when an Idaho taxpayer is allowed to adjust its federal taxable income in calculating its Idaho taxable income, it is *only* because the Idaho Income Tax Act specifically says so. Memo. Recon., R., p. 332.

Idaho Code § 63-3022 specifies the Idaho adjustments that a taxpayer is to make to federal taxable income when calculating Idaho taxable income. It states: "The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022R, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income." I.C. § 63-3022. As the District Court noted, I.C. § 63-3022 specifies in two ways the Idaho adjustments a taxpayer is to make: "First, section 63-3022's own text directly provides for some adjustments, and, second, its text identifies the other sections of the Idaho Income Tax Act (specifically, I.C. §§ 63-3022A through 63-3022R) that provide for other adjustments." Memo. Recon., R., pp. 332-333; *accord*, *Idaho State Tax Comm'n v. Stang*, 135 Idaho 800, 25 P.3d 113, (2001) (holding that it was improper for the taxpayers to adjust the taxable income they reported in their federal income tax

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[1] Specifically, the Estate makes the claim that the "plain meaning" of the basic term "Internal Revenue Code of 1986" is:

> 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'). . . . set forth both in the Statutes At Large (as positive law) and in Title 26 (but not as positive law).

App. Brief, p. 30. The Estate's interpretation is hardly "plain."

return where the Idaho Income Tax Act provided for no such Idaho-specific adjustment).

The District Court properly restated the law that "[w]hen a taxpayer may adjust its federal taxable income in calculating its Idaho taxable income, the Idaho Income Tax Act specifically says so." Memo. Recon., R., p. 332. The District Court's holding is correct: "Nowhere else in the Idaho Income Tax Act are adjustments to federal taxable income permitted. Consequently, no other adjustments are permissible." Memo. Recon., R., p. 333. And again, "[b]ecause the adjustments provided for by section 63-3022 (along with the sections it references) are the only adjustments to federal taxable income 'specifically provided' in the Idaho Income Tax Act, no others are allowed." Memo. Recon., R., p. 333.

In this case, the adjustment that the Estate made to its federal taxable income on its amended return was *not* made pursuant to any Idaho law. The Estate's adjustment to its federal taxable income, namely its new basis formulation, appears nowhere in the prescribed sections of the Idaho tax statutes. It is undisputed that the adjustment was done pursuant to a federal statute after the Estate's federal taxable income was already established. The Estate's adjustment is not provided in Idaho law, and is incongruent with the meaning of Idaho Code § 63-3022. The District Court correctly disallowed the Estate's adjustment to its federal taxable income.

As the District Court held, additional support for the conclusion that the adjustments did not originate in Idaho statute can be found in the attachment accompanying the Estate's amended Idaho income tax return. Memo. Dec., R., p. 241 (fn. 4). That is, the Estate's first Idaho income tax return included a copy of the Estate's federal income tax return, as submitted to the Internal Revenue Service. Joint Stipulation of Facts, Ex. A, R., pp. 48-70. When the Estate attempted to amend its Idaho return in order to claim a large tax refund, the adjustments were submitted on a new "SAMPLE" version of the federal return. Joint Stipulation of Facts, Ex. B, R., pp. 71-85. As

the District Court noted, "SAMPLE" means "*not the same* as the Estate's actual federal return." Memo. Dec., R., p. 241 (fn. 4) (emphasis in original). This sample federal return used the stepped-up basis calculation to adjust the Estate's taxable income. Joint Stipulation of Facts, R., pp. 44-47, Ex. A . All adjustments suggested by the Estate originated in this unfiled sample federal return.

There was no way for the Estate to account for the adjustments to federal taxable income on its new Idaho return, except by attaching a different "SAMPLE" federal return. Idaho's tax forms do not allow a taxpayer a method to change basis of property like the Estate wanted to do on its new Idaho tax return. That is because Idaho law simply does not provide for the basis adjustments the Estate made. Therefore, as the Estate's modification to its federal taxable income is based on an unfiled sample federal return and was not made pursuant to Idaho law, it should be disallowed.

C. This Court need not employ any of the tools of statutory construction because Idaho Code § 63-3004 is unambiguous.

In its brief, the Estate urges this Court to apply principles of statutory construction to I.C. § 63-3004. App. Brief, pp. 39-47. However, this Court need not go there. The Estate's discussion of the various maxims of statutory construction is misplaced.

It seems that the Estate has confused statutory construction with statutory interpretation. For example, in its brief, the Estate refers to "rules of statutory interpretation" in a section heading, but then, in the very first paragraph of that section, it begins a discussion about "statutory construction." App. Brief, p. 41.

"Interpretation of a statute begins with an examination of the statute's literal words. Where the language of a statute is plain and unambiguous, courts give effect to the statute as

written, *without engaging in statutory construction.*" *In re Adoption of Doe*, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014) (internal citation omitted) (emphasis added). "The literal words of the statute must be given their plain, usual, and ordinary meaning; ... [i]f the statute is not ambiguous, this Court does not *construe* it, but simply follows the law as written." *Id.* (internal citation omitted) (emphasis added); *accord*, *State v. Schulz*, 151 Idaho 863, 867, 264 P.3d 970, 974 (2011) ("When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction") (internal citation omitted).

Therefore, there is no occasion to use the tools of statutory construction when a statute is unambiguous. Likewise, *construing* a tax statute in the taxpayer's favor is unnecessary unless the statute's meaning is "so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning." *Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 182, 59 P.3d 983, 987 (2002) (quoting *State v. Browning*, 123 Idaho 748, 750, 852 P.2d 500, 502 (Ct.App. 1993)). "[A]mbiguity is not established merely because different possible interpretations are presented to a court." *Id.*

While both parties to this appeal disagree about the legal meaning of I.C. § 63-3004, there is no allegation that the statute is actually ambiguous. In fact, in its brief, the Estate explicitly acknowledges that the language of I.C. § 63-3004 is "clear and unambiguous." App. Brief, p. 43. The parties differ on the legal effect of the statute. The Commission asserts that, especially in light of I.C. § 63-3002, the meaning of I.C. § 63-3004 is clear and unambiguous.

Because the language of I.C. § 63-3004 is unambiguous, it is "well-established that the clearly expressed intent of the legislature must be given effect, thus leaving no occasion for construction." *State v. McCoy*, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996) (internal citation

omitted). Specifically, there is no need to construe a statute in the taxpayer's favor. The Estate's discussion about statutory construction, App. Brief, pp. 39-47, should be disregarded.

III. The District Court was correct that the loophole the Estate relies upon does not actually exist.

The outcome of this appeal may be determined by the resolution of the previous issue, whether Idaho law requires the Estate to report the identical sum of taxable income on its Idaho return that it reported on its federal return.

However, the District Court provided two supplementary reasons for why the Estate's attempt at reporting disparate taxable income figures is wrong. The District Court correctly held that the Estate's perceived loophole does not actually exist. For one, the Estate did not actually use an "off-code" provision to determine its federal taxable income. The mechanism it used to determine its federal taxable income was a provision *of the Internal Revenue Code* that was then *in effect.* Second, the so-called "off-code" provision here is not actually "off-code." It falls within the meaning of I.C. § 63-3004 and was incorporated into the Idaho Income Tax Act.

This secondary holding—that the loophole does not actually exist—supports the initial holding of the District Court, but is not vital to the resolution of this case. If this Court affirms the District Court on the first issue, it need not reach the remaining issues.

A. The Estate determined its basis and its federal taxable income pursuant to Section 1022 of the Internal Revenue Code, not according to some "off-code" provision.

The essence of the Estate's argument is that the term "Internal Revenue Code," as used in the Idaho Income Tax Act, I.C. § 63-3004, does not include so-called federal "off-code" provisions. Thus, it argues that the Estate may determine its federal taxable income first

pursuant to "off-code" provisions, but then disregard the "off-code" provision and use a different sum when reporting their Idaho taxable income.

Even if the Estate's obligation to report the identical sums on its Idaho return and federal returns could be ignored, the Estate's argument is not tenable. That is because the Estate did not actually use an "off-code" provision to determine its federal taxable income. It used Section 1022 of the Internal Revenue Code. Thus, the Estate cannot say that Section 1022 was not "in effect on the first day of January 2012," as that phrase is used in I.C. § 63-3004. In other words, the loophole on which the Estate relies, does not actually exist.

TRUIRJCA generally restored the estate tax, but the Section 1022 Election allowed estates of individuals who died during 2010 to elect not to pay estate tax. Memo. Dec., R., p. 234. "Under TRUIRJCA § 301(c), if an estate avoids the estate tax by making the Section 1022 Election, its basis in the property it acquired from the decedent will be the modified carryover basis for which 'repealed' Section 1022 provides, not the stepped-up basis for which Section 1014 provides." Memo. Dec., R., p. 234 (footnote omitted). As the District Court explained, "the property's appreciation during the period it was owned by the decedent will not escape federal income taxation if the Section 1022 Election is made, even though it will escape estate taxation." Memo. Dec., R., p. 234.

As the District Court correctly held: "[B]y making the Section 1022 Election, the Estate elected one application of the Internal Revenue Code over another; it did not elect an 'off-code' means of determining its federal taxable income. The Estate determined its federal taxable income under the Internal Revenue Code, including Section 1022." Memo. Dec., R.., p. 240.

Because federal law allowed the Estate to use Section 1022 in 2012, it was undoubtedly "in effect" and incorporated into Idaho law.[2] Memo. Dec., R., pp. 239-242.

Again, the District Court was correct in stating that even though "the Estate made the Section 1022 Election under an 'off-code' provision does not mean, however, that the 'off-code' provision *itself* was the mechanism for determining the Estate's federal taxable income." Memo. Dec., R., pp. 238-39. "To the contrary, the 'off-code' provision at issue here directs electing taxpayers, like the Estate, to the Internal Revenue Code provision—Section 1022—that must be applied in determining basis and, by extension, federal taxable income." Memo. Dec., R., p. 239. The District Court said it well: "[T]he Estate has no way around the conclusion that Section 1022 was 'in effect on the first day of January 2012,' as that phrase is used in I.C. § 63-3004, with respect to the Estate." Memo. Dec., R., p. 239.

Regarding the District Court's holding that Section 1022 was in effect on the first day of January 2012, it is important to note that the language of I.C. § 63-3004 says "Internal Revenue Code of 1986 *in effect.*" Section 1022 was a section of the Internal Revenue Code and was in effect as to the Estate. The Estate wishes this Court to read into I.C. § 63-3004 the phrase "*in the*

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[2] As the District Court set forth: "Section 1022 was enacted in 2001 as part of EGTERRA [Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38]. EGTERRA § 542(a). It was then "repealed" in 2010 as part of TRUIRJCA. TRUIRJCA § 301(a).[ ] But the "repeal" was not total. That is because of TRUIRJCA § 301(e), which states that "*[e]xcept as otherwise provided in [TRUIRJCA § 301]*, the amendments made by [TRUIRJCA § 301] shall apply to estates of decedents dying, and transfers made, after December 31, 2009." TRUIRJCA § 301(e) (emphasis added). The [italicized] language plainly suggested there is an exception somewhere within TRUIRJCA § 301 that renders TRUIRJCA § 301's amendments—one of which is the repeal of Section 1022—*inapplicable to some estates* of decedents whose death occurred after 2009.

"The exception is found in TRUIRJCA § 301(c), which authorizes the Section 1022 Election. As already discussed, by making the Section 1022 Election, an estate avoids estate tax and, in exchange for that benefit, must use Section 1022, instead of the more favorable Section 1014, to figure its basis in property acquired from the decedent. TRUIRJCA itself characterizes the Section 1022 Election as an "*elect[ion] to apply [the Internal Revenue] Code* as though the amendments made by TRUIRJCA § 301(a)] [e.g., the repeal of Section 1022] do not apply . . . with respect to property acquired or passing from [the] decedent." TRUIRJCA § 301(c) (emphasis added). Thus, by making the Section 1022 Election, the Estate elected one application of the Internal Revenue Code over another; it did not elect an "off-code" means of determining its federal taxable income. The Estate determined its federal taxable income under the Internal Revenue Code, including Section 1022." Memo. Dec., R., pp. 239-240 (emphasis in original) (footnote omitted).

actual text of Internal Revenue Code of 1986." But this is language that is simply not in the statute.

Thus, the holding below was correct: "Section 1022 of the Internal Revenue Code—not some 'off-code' provision—required the Estate to use the modified carryover basis. Despite Section 1022's 'repeal' in 2010, it was very much alive and in effect in 2012 with respect to the Estate because the Estate had made the Section 1022 Election." Memo. Dec., R., p. 237. At the end of the day, it was a provision of the Internal Revenue Code—Section 1022—that determined that the Estate use a modified carryover basis, it was not some "off-code" provision that determined the Estate's basis. And, as explained above, "Idaho's income tax statutes plainly require [the Estate to use the] same basis" to calculate its Idaho taxable income. Memo. Dec., R., p. 237.

The "repeal" of Section 1022 does not apply to the Estate because the law allowed the Estate to make the Section 1022 Election. And it actually made the election under Section 1022 of the Internal Revenue Code. Thus, the District Court was correct in holding that "there is no sensible way of regarding Section 1022 as other than 'in effect' with respect to the Estate." Memo. Dec., R., p. 240.[3]

As the District Court explained, "[t]o the limited extent it was not abrogated, Section 1022 remains in force as a matter of TRUIRJCA's plain language. *See also*, 1 U.S.C. § 109 ('The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and *such statute shall be treated as still remaining in force* for the purpose of sustaining any proper action

[3] As the District Court put it: "Indeed, "repeal" means "[a]brogation of existing law by express legislative act." *Black's Law Dictionary* 1490 (10th ed. 2014). But Section 1022 was not completely abrogated; it was abrogated *except* with respect to property acquired from decedents whose estates made the Section 1022 Election, as the Estate did." Memo. Dec., R., p. 240 (emphasis in original).

or prosecution for the enforcement of such penalty, forfeiture, or liability')." Memo. Dec., R., p. 240 (emphasis in original). The District Court was correct that the "term 'Internal Revenue Code,' as defined in I.C. § 63-3004, *includes* Section 1022 insofar as the Estate (among other estates that made the Section 1022 Election) is concerned." Memo. Dec., R., p. 240 (emphasis in original).

In summary, it was a provision of "the Internal Revenue Code of 1986 in effect" that dictated the Estate's basis and therefore its federal taxable income. Therefore, Idaho law requires that the Estate use the identical basis and taxable income when reporting to Idaho.

Finally, we note that it is inconsistent for the Estate to actually use the mechanism of Section 1022 of the Internal Revenue Code to determine its basis (and consequently its federal taxable income), but then claim that Section 1022 was not "in effect" (within the meaning of I.C. § 63-3004) when reporting its Idaho taxable income. The Estate may not claim that it was some "off-code" provision that determined its basis. The Idaho Income Tax Act plainly requires the Estate to use the same basis to calculate its Idaho taxable income, as it used to calculate its federal taxable income.

B. The "off-code" provision, TRUIRJCA § 301(c), is part of Title 26, U.S.C., as a statutory note, and was incorporated into the Idaho Income Tax Act.

The "off-code" provision the Estate relies upon, TRUIRJCA § 301(c), was actually incorporated into the Idaho Income Tax Act. In other words, the loophole that the Estate wishes this Court to recognize simply does not exist. The Estate may not disregard TRUIRJCA § 301(c) when calculating its Idaho taxable income. This independent reason to affirm the District Court is explained below.

First, TRUIRJCA § 301(c) was classified as a "statutory note" to Title 26, U.S.C. Statutory notes are classified to the U.S. Code by the Office of Law Revision Counsel, as its "principal purpose [is] to develop and keep current an official and positive codification of the laws of the United States, 2 U.S.C. § 285a." Memo. Recon., R., p. 339. As the District Court held: Congress expressly and permissibly delegated to the Office of Law Revision Counsel the task of "classify[ing] newly enacted provisions of law to their proper positions in the [United States] Code where"—as here—"the titles involved have not yet been enacted into positive law. . . . 2 U.S.C. § 285b(4)." Memo. Recon., R., p. 339.

As the District Court held: "In that regard, the Estate introduced uncontested evidence that TRUIRJCA § 301(c), enacted by Congress in 2010, was classified by the Office of Law Revision Counsel of the United States House of Representatives as a 'statutory note' under 26 U.S.C. § 2001 (Seep Aff. ¶ 3), not as part of the section text of section 2001 or any other section of Title 26." Memo. Recon., R., pp. 338-39.

Thus, the District Court was correct when it held that "a federal statute becomes codified when it is placed in the United States Code, as either section text or a statutory note, by the Office of Law Revision Counsel, in executing its statutory duty to 'classify newly enacted provisions of law to their proper positions in the Code.' 2 U.S.C. § 285b(4). The judgment call it made here was to classify TRUIRJCA § 301(c) as a statutory note to 26 U.S.C. § 2001. The Office of Law Revision Counsel's decision in that regard settles whether TRUIRJCA § 301(c) is part of Title 26. It is part of Title 26." Memo. Recon., R., p. 346.

The Estate's own evidence affirms that TRUIRJCA § 301(c) is part of Title 26 as a statutory note. The Estate's "Affidavit of Ralph V. Seep," the Law Revision Counsel himself, establishes that TRUIRJCA § 301(c) is a provision of law classified to the United States Code as

a statutory note to 26 U.S.C. § 2001. *See* R., p. 40. And as the District Court noted, "the Estate has twice placed in the record an e-mail from Seep to the Estate's counsel, in which Seep states that the Office of Law Revision Counsel 'decided to place § 301(c) *in the United States Code* as a statutory note under 26 U.S.C. § 2001.'" Memo. Recon., R., pp. 341-42 (emphasis in original).

In sum, the Office of Law Revision Counsel codifies federal laws once the U.S. Congress enacts them. Statutory notes that are classified by the Office of Law Revision Counsel to a section of Title 26 are part of Title 26. TRUIRJCA § 301(c), though, not a part of the section text of Title 26, is part of Title 26 as a statutory note to 26 U.S.C § 2001.

Second, the "off-code" provision (TRUIRJCA § 301(c)) was incorporated into the Idaho Income Tax Act. As the District Court held: "[A]ny provision of Title 26 that was in effect on January 1, 2012, was incorporated into the Idaho Income Tax Act for the 2012 tax year." Memo. Recon., R., p. 346. The District Court explained:

> "[T]he Idaho Income Tax Act defines 'taxable income' as 'federal taxable income as determined under the Internal Revenue Code.' I.C. § 63-3011B . . . . [I]t defines 'Internal Revenue Code,' for purposes of the 2012 tax year, as 'the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012.' I.C. § 63-3004 (2012 version) . . . . [W]hen a term is not defined in the Idaho Income Tax Act, a Tax Commission regulation, IDAPA 35.01.01.010.08, adopts any definition of the term that is set forth in the Internal Revenue Code, particularly in Internal Revenue Code § 7701 (i.e., 26 U.S.C. § 7701). Section 7701 defines 'Internal Revenue Code of 1986' as '*this title*,' meaning Title 26 of the United States Code. 26 U.S.C. § 7701(a)(29)."

Memo. Recon., R., p. 334 (emphasis in original). Accordingly, I.C. § 63-3004's conditions for incorporation are satisfied: TRUIRJCA § 301(c) is part of Title 26, and it was "in effect" on January 1, 2012.

The Estate argued below that that the Idaho legislature may not have intended to incorporate statutory notes. R., pp. 321-22. While, as the District Court held, "[i]t is true that the Idaho Income Tax Act itself doesn't use the term 'Title 26.' But, by virtue of IDAPA

35.01.01.010.08, which the Tax Commission adopted in 1997, the term 'Internal Revenue Code of 1986' means Title 26 for purposes of the Idaho Income Tax Act. The Tax Commission was authorized by the legislature to adopt that regulation. I.C. § 63-3039(1), (2)." Memo. Recon., R., p. 348. And the District Court was correct when it held that "the legislature, which can be presumed to know about the regulation and has unquestioned power to override it, hasn't exercised that power. The Estate identifies no grounds on which the Court could decline to enforce the regulation, the effect of which, as already explained, is to define the term 'Internal Revenue Code of 1986' in a way that encompasses statutory notes to Title 26." Memo. Recon., R., p. 348.

In conclusion, the so-called "off-code" provision here is not actually "off-code." A taxpayer's federal taxable income must be calculated to include the provisions of Title 26, U.S.C. The District Court was correct that the Estate is not entitled to calculate its federal taxable income for purposes of the Idaho Income Tax Act in a way that is different than when it reported its taxable income to the I.R.S.

IV. One of the key components of the Idaho Income Tax Act, that of having tax base conformity with federal taxable income, would be upset by the Estate's argument for allowing it to report disparate taxable income numbers to Idaho.

Of the 43 states that have some form of income tax, 35 of them use federal definitions of income as the starting point for calculating residents' taxable income. *See* Ruth Mason, *Delegating Up: State Conformity with the Federal Tax Base*, 62 Duke L.J. 1267 (2013).[4] As

[4] *See also,* Harley T. Duncan, *Relationships Between Federal and State Income Taxes*, Fed'n of Tax Adm'rs (April 2005), available at: http://govinfo.library.unt.edu/taxreformpanel/meetings/pdf/incometax_04182005.pdf; *see also*, *Knotty Problems in the Branches of the Federal Tree*, Wm. & Mary Annual Tax Conference, Paper 633 (1967), available at: http://scholarship. law.wm.edu/tax/633.

explained above, Idaho is one of those 35 states that have elected to use federal definitions of income as the starting point for calculating residents' taxable income.

There are distinct benefits inuring to Idaho for having this type of income tax arrangement. Conformance with the federal definitions of income streamlines the administrative process for states. *See*, Heather M. Field, *Binding Choices: Tax Elections & Federal/state Conformity*, 32 Va. Tax Rev. 527 (2013). "[C]onformity allows states to rely on well-developed federal regulations, [Internal Revenue] Service guidance, and federal cases that interpret the relevant tax provisions." *Id.*, at 539. The simplification gained by conforming to the federal definitions of income has the added benefit of reducing the cost of administering a state's income tax program. *Id.*, at 538.

Taxpayers also benefit from conformance with the federal definitions of income. Without tax base conformity, a taxpayer would need to keep two sets of books and records for the purposes of completing their state and federal income taxes. Mason, *Delegating Up*, 62 Duke L.J. 1267. Conformance eliminates that need, which as a result lowers the cost to the taxpayer which in turn increases taxpayer voluntary compliance. *Id.*, at 1280. The easier and less complicated the income tax filing process is, the more likely an individual will voluntarily file their returns. *Id.* The risk of taxpayers making mistakes on their income tax returns is also reduced due to the fact that taxpayers do not need to calculate two separate computations for taxable income for both state and federal income tax purposes. *See*, *Binding Choices*, 32 Va. Tax Rev. 527 (2013).

Inversely, if a state were to diverge from the federal definitions of income it would face a whole host of difficulties and hurdles. *See* Daniel Shaviro, *An Economic and Political Look at Federalism in Taxation*, 90 Mich. L. Rev. 895, 921 (1992). In order to continue to administer its

income tax program the state would need to draft new legislation and administrative rules to instruct taxpayers and tax preparers on how to calculate Idaho taxable income. *Id.* Numerous new tax forms would need to be created and disseminated to taxpayers and tax preparers. *Id.* Taxpayers would be required to keep two separate sets of records for state and federal income tax purposes. *Id.* Ultimately, divergence from the federal definitions of income would dramatically increase the cost of administering that state's income tax program and would increase the burden on taxpayers and decrease their voluntary compliance. *Id.*

When the Estate asks this Court to disregard Idaho law and legislative intent and allow it to provide one sum on their federal income tax returns and a wholly different sum on their Idaho income tax returns, it is not doing so in a vacuum. If this Court finds in favor of the Estate, that finding would affect all the income taxpayers in the State of Idaho. Not only would that finding be setting a precedent which is directly contradictory to legislative intent and case law; but it would also have the effect of requiring the Commission to alter the way it administers the Idaho Income Tax Act. The cost to the State of Idaho for the administration of the Idaho Income Tax Act would rise for the foreseeable future. The income tax filing process would be complicated and burdensome to Idaho taxpayers which would ultimately lead to decreased voluntary compliance.

There may be some disadvantages of having Idaho's tax system conform to the federal one; but whether Idaho *should* have a tax base conformity arrangement is not the question on appeal. The courts have no authority to rewrite the tax code. *Idaho State Tax Comm'n v. Stang*, 135 Idaho at 802-03, 25 P.3d at 115-16 (2001) (citing *Bogner v. State Dep't of Revenue and Taxation,* 107 Idaho 854, 693 P.2d 1056 (1984)). If the provisions of the tax code are unsound, the power to correct it is legislative, not judicial. *Stang*, 135 Idaho at 803. Likewise, when a

statute is unambiguous, the courts' duty is to "follow the law as written." *John Hancock Mut. Life Ins. Co. v. Neill*, 79 Idaho 385, 405, 319 P.2d 195, 206 (1957). Even if a law is "socially or economically unsound, the power to correct it is legislative, not judicial." *Id.*

In the end, the point of this appeal is not to debate the relative merits of tax base conformity. There is sound policy for having tax base conformity in Idaho. The point is that the Estate's argument *ignores* the legislative intent of having tax base conformity in Idaho. Thus, the Estate's argument should not stand. The District Court should be affirmed in its holding that the Estate should not be allowed to report incongruent taxable income numbers to Idaho.

V. The Estate is not entitled to attorney fees on appeal.

The Estate requests attorney fees on appeal pursuant to Idaho Code § 63-3049(d) and Rules 40 and 41 of the Idaho Appellate Rules. App. Brief, p. 10.

Idaho Code § 63-3049(d) reads in pertinent part: "[w]henever it appears to the court that: (1) Proceedings before it have been instituted or maintained by a party primarily for delay; or (2) A party's position in such proceeding is frivolous or groundless; . . . the court, in its discretion, may require the party which did not prevail to pay to the prevailing party costs, expenses and attorney's fees." I.C. § 63-3049(d).

In its brief, the Estate offers no legal support and no argument that this appeal was maintained for purposes of delay, nor that the Commission's position in this proceeding was frivolous or groundless. Likewise, the Estate has offered no legal support and no argument that the Commission acted unreasonably in any way. I.C. § 63-3049(d).

Idaho Appellate Rule 35(a)(5) requires a proponent for attorney fees on appeal to provide a statement of the basis for such an award of attorney fees. A party *waives* its entitlement to attorney fees on appeal when its brief fails to provide either authority or argument in support of

the issue. *Young Electric Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 810, 25 P.3d 117, 123 (2001) (quoting *State v. Zichko,* 129 Idaho 259, 263, 923 P.2d 966, 967 (1996)).

Because the Estate has failed to provide any authority or any argument in support of its request for attorney fees on appeal, the Estate has waived any entitlement to attorney fees, and its request should be denied absolutely.

CONCLUSION

For these reasons, the orders of the District Court granting summary judgment to the Tax Commission, should be affirmed.

DATED this 30th day of June, 2016.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

David B. Young
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June 2016, I caused to be served two (2) true and correct copies of the foregoing **RESPONDENT IDAHO STATE TAX COMMISSION'S BRIEF** by hand delivery addressed to:

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APPENDIX

Document #1: Memorandum Decision and Order on Cross-Motions for Summary Judgment (July 31, 2015)
(R., pp. 229-243)

Document #2: Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment (November 16, 2015)
(R., pp. 330-358)

Appendix
Document #1:

Memorandum Decision and Order on Cross-Motions for Summary Judgment (July 31, 2015)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE,

Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,

Defendant.

Case No. CV-OC-2015-00106

MEMORANDUM DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This is an income-tax case. The parties' dispute concerns the taxpayer's "basis" in real property the taxpayer sold during 2012. A taxpayer's basis in property, in practical terms, is the amount of money that must be subtracted, in determining the taxpayer's taxable gain or loss on a sale of property, from the amount of money the taxpayer realized by selling the property.

The taxpayer here is Plaintiff Estate of Zippora Stahl. The Estate claims its basis, for Idaho income tax purposes, is the property's fair market value as of Stahl's death in 2010. Defendant Idaho State Tax Commission claims, by contrast, that Stahl's basis in the property—essentially, the cost of the property to her—carries over to the Estate.

The parties have filed cross-motions for summary judgment concerning which basis in the property is the correct one under Idaho's income-tax statutes. The motions were argued and taken under advisement on July 23, 2015. For the reasons that follow, the Court now grants summary judgment to the Tax Commission and denies it to the Estate.

I.

BACKGROUND

The parties dispute the legal consequences arising from the facts. The facts themselves, by contrast, are undisputed. The undisputed facts are set forth in the Joint Stipulation of Facts the parties filed on June 26, 2015.

Summarizing the stipulated facts, the Court first notes that Zippora Stahl resided in Idaho at the time of her death in 2010. (Joint Stipulation of Facts ¶ 1.) When she died, she owned real property in Chino, California. (Id. ¶ 2.) The Chino property became part of the Estate. Its worth at the time of Stahl's death substantially exceeded her investment in it. (Id.)

A probate court in California approved the Estate's sale of the Chino property. (Id. ¶ 3.) The Estate, acting through personal representative Kathleen Krucker, then proceeded to sell the Chino property in December 2012. (Id. ¶¶ 1, 4.)

On its 2012 federal income tax return, the Estate reported a taxable gain on the sale of the Chino property. (Id. ¶ 5.) The reported gain amount was $14,881,659. (Id.) It was figured by starting with the $16,339,000 sale price and subtracting from the sale price the Estate's $1,457,341 basis in the property. (Id.)

As already noted, the taxpayer's "basis" in property is the amount of money that must be subtracted, in determining the taxpayer's taxable gain or loss on a sale of property, from the amount of money the taxpayer realized by selling the property. Under the Internal Revenue Code, a different method of determining basis may be appropriate in one circumstance than in another. The Estate used a "modified carryover basis," in keeping with an election Krucker previously had made for the Estate under section 301(c) of the federal Tax Relief, Unemployment Insurance

Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"), Public Law 111-312. (Id.) The Internal Revenue Service refers to the election for which TRUIRJCA § 301(c) provides as the "Section 1022 Election." I.R.S. Pub. No. 4895, *Tax Treatment of Property Acquired from a Decedent Dying in 2010*, at 2 (rev. Oct. 14, 2011); I.R.S. Notice 2011-66, I.R.B. 2011-35. The Court will use that terminology as well. It is apt for reasons demonstrated below.

Some background information on federal income and estate tax law is necessary to understand the import of the Estate's Section 1022 Election.

The United States has long imposed an estate tax—a tax "on the transfer of the taxable estate" of decedents who are United States citizens or residents. I.R.C. § 2001(a). The taxable estate is determined, in part, by the value of the decedent's property at the time of her death. I.R.C. §§ 2051, 2031(a). Because the estate tax is imposed on the property's value at the time of death, those to whom the property is transferred as a result of the decedent's death, generally speaking, receive for federal income tax purposes a basis in the property equal to its value at the time of death. I.R.C. § 1014(a)(1). The transferee's basis is commonly called a "stepped-up basis" because the transferee's basis, if the property appreciated in value during the period the decedent owned it, is increased (stepped up) from the decedent's own basis in the property before her death, which, essentially, is the cost of the property to her. I.R.C. § 1012(a). So, when the transferee later sells the property, the transferee's taxable gain or loss on the sale will, leaving aside potential complexities not relevant here, be the difference between the sale price and the stepped-up basis. I.R.C. §§ 1001, 1011. This taxation scheme ensures that the appreciation in the property's value during the period it was owned by the decedent is not subject to both estate tax when the decedent dies and income tax when the transferee eventually sells the property.

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2011 ("EGTRRA"), Public Law 107-16. EGTRRA gradually phased out the estate tax. The phase-out became complete at the end of 2009, so that no tax was to be imposed on the estates of individuals who died during 2010 or any later year. EGTRRA § 501. Having provided for the elimination of the estate tax, Congress evidently concluded it no longer was just for transferees of decedents' property to have a stepped-up basis in the property. Thus, in EGTRRA, Congress terminated Section 1014 of the Internal Revenue Code, which provides for the stepped-up basis, with respect to estates of individuals who died after 2009. EGTRRA § 541.

Also as part of EGTRRA, Congress enacted new Section 1022 of the Internal Revenue Code, providing that a transferee of a decedent's property, if the decedent died after 2009, will have a basis in the property equal to "the lesser of—(A) the adjusted basis of the decedent, or (B) the fair market value of the property at the date of the decedent's death." EGTRRA § 542(a); I.R.C. § 1022(a)(2). The Internal Revenue Service calls this basis the "modified carryover basis." I.R.S. Pub. No. 4895, *Tax Treatment of Property Acquired from a Decedent Dying in 2010*, at 2 (rev. Oct. 14, 2011). The term "carryover" is an evident reference to the transferee's basis being carried over from the decedent. In any event, because the transferee's gain or loss on an eventual sale of the property is figuring using a modified carryover basis, the property's appreciation in value during the period the decedent owned it, though no longer subject to estate tax, would be subject to income tax under new Section 1022.

In 2010, the year in which the estate tax's phase-out under EGTRRA became complete, Congress changed course. That year, Congress enacted TRUIRJCA. TRUIRJCA repealed the portions of EGTRRA that provided for the estate tax's repeal and for the transferees of decedents'

property no longer to have a stepped-up basis in the property. TRUIRJCA § 301(a). It did so with respect to the estates of individuals who died after 2009. TRUIRJCA § 301(e). One aspect of TRUIRJCA, then, was to effectuate, for the most part, the repeal of Section 1022 with respect to the estates of individuals who died after 2009.

That said, Congress evidently regarded the estates of individuals who died during 2010 as a special case. For their benefit, it authorized the Section 1022 Election in TRUIRJCA § 301(c), the pertinent portion of which is as follows:

> (c) SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.—Notwithstanding [TRUIRJCA § 301(a), which reinstates the estate tax and, for the most part, repeals Section 1022], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by [TRUIRJCA § 301(a)] do not apply with respect to chapter 11 of such Code [which provides for the estate tax] and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code).

TRUIRJCA § 301(c) (emphasis added). TRUIRJCA § 301(c) was classified by the Office of Law Revision Counsel of the United States House of Representations as a statutory note under I.R.C. § 2001 (Seep Aff. ¶ 3[1]), as opposed to being codified as part of a section of the Internal Revenue Code (Title 26 of the United States Code). The parties agree, however, that TRUIRJCA § 301(c) has full status as valid and enforceable federal law, despite being uncodified.

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[1] The balance of the Seep affidavit's paragraph 3 was stricken in an oral ruling on July 15, 2015. The basis for that ruling was stated on the record. In essence, the Court ruled that the stricken testimony lacked foundation because Seep, after giving his job title and describing the function of the federal office for which he works, proceeded to offer what amounts to opinion testimony or legal conclusions, without explaining the reasons behind them. Regardless, the stricken testimony, had it been considered, would not change the outcome on summary judgment.

Explained in plain language, the Section 1022 Election allowed the estates of individuals who died during 2010 to elect not to pay estate tax, despite TRUIRJCA's general reinstatement of the estate tax. Under TRUIRJCA § 301(c), if an estate avoids the estate tax by making the Section 1022 Election, its basis in the property it acquired from the decedent will be the modified carryover basis for which "repealed" Section 1022[2] provides, not the stepped-up basis for which Section 1014 provides. Thus, the property's appreciation during the period it was owned by the decedent will not escape federal income taxation if the Section 1022 Election is made, even though it will escape estate taxation.

As already noted, the Estate made the Section 1022 Election. As a result, it was not obligated to pay estate tax. It was, however, obligated to use the modified carryover basis for federal income tax purposes with respect to its 2012 sale of the Chino property. And, as already noted, that is exactly what it did, resulting in a reported $14,881,659 taxable gain on that sale.

On the Estate's initial 2012 Idaho income tax return, the Estate figured its taxable gain on the sale of the Chino property the same way it had done on its 2012 federal income tax return. (Joint Stipulation of Facts ¶ 6.) In other words, the Estate initially used the modified carryover basis in figuring its Idaho taxable income for the year 2012.

In processing the Estate's Idaho income tax return, the Tax Commission determined the Estate had incorrectly calculated a tax credit. (Id. ¶ 7.) It therefore issued a notice informing the Estate that an additional $20,629 in Idaho income tax was owed for the year 2012. (Id.)

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[2] The term "repealed" is used loosely here. As discussed later in this decision, though Section 1022 was, as a general matter, repealed by TRUIRJCA § 301(a), TRUIRJCA § 301(e) makes clear that the repeal of Section 1022 does not apply to estates that, like the Estate, make the Section 1022 Election.

The Estate protested the notice. (Id. ¶ 8.) In doing so, the Estate amended its 2012 Idaho income tax return. (Id.) On the amended return, the Estate changed its basis in the Chino property. (Id.) Instead of using a modified carryover basis, as it previously had done for both federal and Idaho income tax purposes, the Estate switched to a stepped-up basis for Idaho income tax purposes only. (Id.) This methodological change reduced the Estate's reported Idaho taxable gain on the sale of the Chino property from $14,881,659 to $318,909. (Id.) Having made that change, the Estate asserted it is owed a refund of $1,026,435. (Id.) The Estate did not amend its federal return. Its position, in so amending its Idaho return, is that federal law provides for a modified carryover basis, whereas Idaho law provides for a stepped-up basis, in this instance.

The Tax Commission rejected the Estate's refund claim and upheld its own prior determination that the Estate owed an additional $20,629 in Idaho income tax. (Id. ¶ 9.)

Contending the Tax Commission wrongly rejected its refund claim, the Estate filed this action, seeking the refund the Tax Commission refused to provide. Trial is scheduled to begin December 7, 2015. As already noted, however, the parties have filed cross-motions for summary judgment. Those motions have been argued and are now ready for decision.

II.

LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Accordingly, the movant must prove the absence of a genuine issue of material fact. *E.g., Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 103-04, 294 P.3d 1111, 1115-16 (2013). If the

movant so proves, the burden shifts to the nonmovant to prove the opposite: the existence of a genuine issue of material fact. *Id.* at 104, 294 P.3d at 1116.

To meet that ultimate burden, the nonmovant "may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Id.* (quotation marks omitted). The record must be construed in the light most favorable to the nonmovant, with all reasonable inferences drawn in the nonmovant's favor. *Id.* Nevertheless, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient" to avoid summary judgment. *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013). The nonmovant's failure to prove the existence of a genuine issue of material fact "will result in an order granting summary judgment." *Sprinkler Irrigation Co. v. John Deere Ins. Co.*, 139 Idaho 691, 698, 85 P.3d 667, 675 (2004).

As already noted, the parties do not dispute the facts. Consequently, the party whose legal position is correct, in light of the agreed facts, is entitled to summary judgment.

III.

ANALYSIS

In reporting its taxable gain for federal income tax purposes on the 2012 sale of the Chino property, the Estate used a modified carryover basis. The parties agree that federal law required it to do so. The Estate initially used the same modified carryover basis in reporting its taxable gain for Idaho income tax purposes, but then the Estate amended its Idaho income tax return to switch to a stepped-up basis. The parties disagree about whether Idaho law permitted the Estate to do so. They agree that the Internal Revenue Code (Title 26 of the United States Code) is incorporated into Idaho's income tax statutes and that, as a result, the same basis usually must be used for both

federal and Idaho income tax purposes. They disagree, however, about whether Idaho's income tax statutes also incorporate so-called "off-code" provisions, meaning provisions of federal law that have federal income tax implications but are not codified in the Internal Revenue Code. That is the fundamental disagreement between them. It is a legal one, not a factual one. Regardless, the Court perceives it as essentially irrelevant to the correct resolution of this case. Section 1022 of the Internal Revenue Code—not some "off-code" provision—required the Estate to use the modified carryover basis. Despite Section 1022's "repeal" in 2010, it was very much alive and in effect in 2012 with respect to the Estate because the Estate had made the Section 1022 Election. Since an Internal Revenue Code provision—Section 1022—dictates that the Estate use a modified carryover basis, rather than an "off-code" provision, Idaho's income tax statutes plainly require the same basis. These conclusions are further explained below.

The parties agree that Idaho levies a tax on "Idaho taxable income." "Idaho taxable income" is defined in the Idaho Income Tax Act, I.C. §§ 63-3001 *et seq.*, as "federal taxable income as determined under the Internal Revenue Code," I.C. § 63-3011B, "as modified pursuant to the Idaho adjustments specifically provided in [Idaho's income tax statutes]." I.C. § 63-3011C (emphasis added). The meaning of this language is quite clear: Idaho taxable income is equal to federal taxable income, except to the extent Idaho's income tax statutes specifically provide for adjustments to federal taxable income. This clear meaning is supported by the Idaho legislature's own statutory declaration of intent:

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

> application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, . . . basis and other pertinent provisions . . . , resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived . . . . All of the foregoing is subject to modifications in Idaho law . . . .

I.C. § 63-3002 (emphasis added).

The nub of the parties' dispute is what, exactly, the term "Internal Revenue Code," as used in the Idaho Income Tax Act, means. For purposes of the 2012 tax year, the Idaho Income Tax Act defined that term as follows: "The term 'Internal Revenue Code' means the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012." I.C. § 63-3004 (emphasis added). The Estate's position is that this definition excludes "off-code" provisions, *i.e.*, provisions of federal law not codified in the Internal Revenue Code on January 1, 2012. The Estate maintains that, consequently, any "off-code" provision—even one that must be taken into account in determining federal taxable income—must be disregarded in determining Idaho taxable income. The Estate correctly points out that TRUIRJCA § 301(c), which authorized it to make the Section 1022 Election, is an "off-code" provision. So, the Estate contends its Section 1022 Election must be disregarded in determining Idaho taxable income. On that thinking, the Estate says it was entitled to use a stepped-up basis under Section 1014 of the Internal Revenue Code in determining its Idaho taxable income, even though federal law required it to use a modified carryover method under "repealed" Section 1022 of the Internal Revenue Code in determining its federal taxable income.

That the Estate made the Section 1022 Election under an "off-code" provision does not mean, however, that the "off-code" provision itself is the mechanism for determining the Estate's

federal taxable income. To the contrary, the "off-code" provision at issue here directs electing taxpayers, like the Estate, to the Internal Revenue Code provision—Section 1022—that must be applied in determining basis and, by extension, federal taxable income. Thus, the Estate has no way around the conclusion that Section 1022 was "in effect on the first day of January 2012," as that phrase is used in I.C. § 63-3004, with respect to the Estate. That Section 1022 was "in effect" with respect to the Estate at that time is clear as a matter of federal law, as next shown.

As already explained in this decision's "Background" section, Section 1022 was enacted in 2001 as part of EGTRRA. EGTRRA § 542(a). It was then "repealed" in 2010 as part of TRUIRJCA. TRUIRJCA § 301(a).[3] But the "repeal" was not total. That is because of TRUIRJCA § 301(e), which states that "[e]xcept as otherwise provided in [TRUIRJCA § 301], the amendments made by [TRUIRJCA § 301] shall apply to estates of decedents dying, and transfers made, after December 31, 2009." TRUIRJCA § 301(e) (emphasis added). The underscored language plainly suggests there is an exception somewhere within TRUIRJCA § 301 that renders TRUIRJCA § 301's amendments—one of which is the repeal of Section 1022—inapplicable to some estates of decedents whose death occurred after 2009.

The exception is found in TRUIRJCA § 301(c), which authorizes the Section 1022 Election. As already discussed, by making the Section 1022 Election, an estate avoids estate tax and, in exchange for that benefit, must use Section 1022, instead of the more favorable Section 1014, to figure its basis in property acquired from the decedent. TRUIRJCA itself characterizes

[3] The repealing language is that "[e]ach provision of law amended by subtitle A or E of [EGTRRA] is amended to read as such provision would read if such subtitle had never been enacted." TRUIRJCA § 301(a). Section 1022 was part of EGTRRA's subtitle E.

the Section 1022 Election as an "elect[ion] to apply [the Internal Revenue] Code as though the amendments made by [TRUIRJCA § 301(a)] [*e.g.*, the repeal of Section 1022] do not apply . . . with respect to property acquired or passing from [the] decedent." TRUIRJCA § 301(c) (emphasis added). Thus, by making the Section 1022 Election, the Estate elected one application of the Internal Revenue Code over another; it did not elect an "off-code" means of determining its federal taxable income. The Estate determined its federal taxable income under the Internal Revenue Code, including Section 1022.

Because federal law quite plainly provides that the "repeal" of Section 1022 does not apply to the Estate (or to other estates that made the Section 1022 Election), there is no sensible way of regarding Section 1022 as other than "in effect" with respect to the Estate. Indeed, "repeal" means "[a]brogation of existing law by express legislative act." *Black's Law Dictionary* 1490 (10th ed. 2014). But Section 1022 was not completely abrogated; it was abrogated except with respect to property acquired from decedents whose estates made the Section 1022 Election, as the Estate did. To the limited extent it was not abrogated, Section 1022 remains in force as a matter of TRUIRJCA's plain language. *See also* 1 U.S.C. § 109 ("The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.") (emphasis added). Thus, the term "Internal Revenue Code," as defined in I.C. § 63-3004, includes Section 1022 insofar as the Estate (among other estates that made the Section 1022 Election) is concerned.

I.C. § 63-3004 is not ambiguous in that regard, as there is too little room for doubt about what it means. *See Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 182, 59 P.3d 983, 987 (2002) ("A statute is ambiguous when the meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning.") (internal quotation marks omitted). Consequently, there is no occasion to apply canons of statutory construction, including the canon that ambiguities in tax statutes are to be resolved in the taxpayer's favor. *E.g., id.* And the meaning of I.C. § 63-3004 is all the clearer in light of I.C. §§ 63-3002 and 63-3011C, both of which plainly say that Idaho taxable income is equal to federal taxable income unless Idaho law provides for a modification or adjustment to federal taxable income. The Estate's apparent view that I.C. § 63-3004 provides for such a modification or adjustment, in that it supposedly does not incorporate "repealed" (yet applicable to the Estate) Section 1022, is not a tenable one. Idaho law simply does not provide for the basis adjustment the Estate made.[4]

It is unnecessary to wade into the equities of the parties' respective positions to so decide. Each side has a reasonable argument for why its preferred outcome can be viewed as fair. Even assuming *arguendo* that the Estate has the more compelling argument of those two arguments, the Court's charge is to ascertain and apply the law, not to determine whether the better rule of law

[4] Some additional support for that conclusion can be found in the nature of the Estate's amended Idaho income tax return. Its initial Idaho income tax return (Joint Stipulation of Facts Ex. A) included a copy of the Estate's federal income tax return, as submitted to the Internal Revenue Service. By contrast, the amended Idaho return (id. Ex. B.) included a "SAMPLE" version of the federal return—"SAMPLE" meaning not the same as the Estate's actual federal return—that uses a stepped-up basis in determining the Estate's taxable gain on the sale of the Chino property. The Estate evidently took that approach because Idaho's income tax forms, which are designed to account for the adjustments to federal taxable income for which Idaho law provides, do not provide any way of accounting for the change in basis the Estate says Idaho law requires.

would allow the Estate (and similarly situated taxpayers) to use a stepped-up basis rather than a modified carryover basis. The law requires the Estate to use a modified carryover basis for Idaho income tax purposes. For that reason, the Tax Commission is entitled to summary judgment.

The Court understands from paragraph 2 on page 4 of the parties' Joint Stipulation of Facts that its ruling in favor of the Tax Commission resolves this case in its entirety, facilitating the entry of a final judgment in the Tax Commission's favor. Judgment will be entered in a separate document, as I.R.C.P. 54(a) and I.R.C.P. 58(a) require.

Accordingly,

IT IS ORDERED that summary judgment is granted to the Tax Commission, and denied to the Estate, on the Estate's claims. The Tax Commission's counsel shall promptly submit an appropriate form of judgment for the Court's consideration, after allowing the Estate's counsel a reasonable opportunity to review and comment.

Dated this 31st day of July, 2015.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on 31st of July, 2015, I mailed (served) a true and correct copy of the within instrument to:

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CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

Appendix
Document #2:

Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration and Amendment of Judgment (November 16, 2015)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

ESTATE OF ZIPPORA STAHL, DECEASED, KATHLEEN KRUCKER, PERSONAL REPRESENTATIVE, Plaintiff, vs. IDAHO STATE TAX COMMISSION, Defendant.	Case No. CV-OC-2015-00106 MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT

In a decision entered on July 31, 2015, the Court resolved this income-tax dispute in favor of Defendant Idaho State Tax Commission and against Plaintiff Estate of Zippora Stahl. Judgment was entered for the Tax Commission three weeks later.

On September 3, 2015, the Estate filed a timely motion to reconsider the decision and to amend the judgment. The Court set a briefing schedule for the Estate's motion. The order setting the briefing schedule stated that, once the briefing were complete, the Court would determine, in an exercise of its discretion under I.R.C.P. 7(b)(3)(D), whether to hold oral argument.

The briefing was complete on October 1, 2015. The Court reviewed the briefs and determined that supplemental briefs addressing two specific questions might be helpful to deciding the motion. Consequently, on October 13, 2015, the Court entered an order allowing supplemental briefs addressing those two questions to be filed by October 30, 2015.

The supplemental briefs were timely filed. The Court has reviewed them. Having done so, the Court concludes, in its discretion, that oral argument would not be helpful to deciding the Estate's motion to reconsider. The briefing is thorough. The Court understands the arguments. Accordingly, the Court deems the motion under advisement as of the completion of briefing on October 30, and now proceeds to decide it on the briefs.

ANALYSIS

During 2012, the Estate sold highly appreciated real property in Chino, California. Its 2012 federal income tax return reported a taxable gain on the sale of nearly $15 million, calculated by subtracting its "modified carryover basis" in the property from the sale proceeds. The Estate's original 2012 Idaho income tax return did the same.

Later, however, the Estate amended only its Idaho return, contending that, although its federal taxable gain was calculated correctly for federal purposes, the Idaho Income Tax Act, I.C. §§ 63-3001 *et seq.*, permitted recalculating its federal taxable gain for Idaho purposes according to a different, more favorable calculation method. Specifically, the Estate contended its federal taxable gain could be recalculated for Idaho purposes by subtracting a "stepped-up basis" in the Chino property from the sale proceeds, resulting in a taxable gain of only about $300,000. Thus, the Estate's position is that the Idaho Income Tax Act allowed it to use a different method for determining its "basis" in the property—and, by extension, its taxable gain on the sale of the property—than the method required by federal law.

The Estate's position, however, is based on an errant legal premise: that the Idaho Income Tax Act directs it to disregard the particular federal statute that drove the calculation of the federal taxable gain it reported on its 2012 federal tax return.

A. When a taxpayer may adjust its federal taxable income in calculating its Idaho taxable income, the Idaho Income Tax Act specifically says so.

The Idaho Income Tax Act operates on the well-established principle that "Idaho taxable income is the same as federal taxable income," except when I.C. § 63-3022 directs the taxpayer to adjust its federal taxable income in calculating its Idaho taxable income. *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996) (emphasis added). According to the Idaho Supreme Court, "I.C. § 63-3002 indicates that this [principle] was the intent of the legislature." *Id.* It stood on solid statutory ground in ascribing that intent to the legislature. Section 63-3002 expressly declares as follows:

> It is the intent of the legislature . . . insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, . . . basis and other pertinent provisions . . . , resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived . . . . All of the foregoing is subject to modifications in Idaho law . . . .

I.C. § 63-3002 (emphasis added).

Though section 63-3022 has been amended many times since *Potlatch* was decided nearly twenty years ago, it retains the same function it had then: specifying the adjustments to federal taxable income that are to be made in calculating Idaho taxable income. Now, it does so in two ways. First, section 63-3022's own text directly provides for some adjustments, and, second, its text identifies the other sections of the Idaho Income Tax Act (specifically, I.C. §§ 63-3022A through 63-3022R) that provide for other adjustments. I.C. § 63-3022 ("The additions and

subtractions set forth in this section, and in sections 63-3022A through 63-3022R, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income.").

Nowhere else in the Idaho Income Tax Act are adjustments to federal taxable income permitted. Consequently, no other adjustments are permissible. The Idaho Income Tax Act's definition of the term "Idaho taxable income" demonstrates as much. That term means federal taxable income "as modified pursuant to the Idaho adjustments specifically provided in [the Idaho Income Tax Act]." I.C. § 63-3011C (emphasis added). Because the adjustments provided for by section 63-3022 (along with the sections it references) are the only adjustments to federal taxable income "specifically provided" in the Idaho Income Tax Act, no others are allowed.

B. The Court assumes, without deciding, the Estate is correct in arguing that provisions of federal law not part of Title 26 of the United States Code are disregarded in calculating federal taxable income for purposes of the Idaho Income Tax Act.

The Estate concedes that neither section 63-3022 itself, nor any of the sections it references, directs the Estate to adjust its federal taxable income as it did in its amended 2012 Idaho tax return. The authority the Estate claims to find in the Idaho Income Tax Act for making that adjustment is much more latent.

The Estate's theory begins with noting that its taxable gain on the sale of the Chino property, as reported on its 2012 federal tax return, was calculated according to Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA"), Public Law 111-312. From that starting point, the Estate's theory depends on two legal propositions. The first is that provisions of federal law not part of Title 26 of the United States Code but that bear on calculating the taxable income a taxpayer reports on its federal tax return—the Estate calls these "off-code" provisions—are disregarded in calculating the taxpayer's

federal taxable income for purposes of the Idaho Income Tax Act. The second is that TRUIRJCA § 301(c) isn't part of Title 26. The balance of this decision's section B is devoted to explaining the Estate's argument on the first proposition—an argument the Court accepts as correct for argument's sake, despite being skeptical that it accords with legislative intent. The second proposition is reserved for discussion in this decision's section C.

According to the Estate, "off-code" provisions are disregarded in calculating federal taxable income for Idaho purposes because they aren't incorporated into the Idaho Income Tax Act. This is shown, the Estate says, by the interplay among the definitions of four terms used in the Idaho Income Tax Act: (i) "taxable income"; (ii) "Internal Revenue Code"; (iii) "Internal Revenue Code of 1986"; and (iv) "Idaho taxable income."

First, the Idaho Income Tax Act defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." I.C. § 63-3011B (emphasis added).

Second, it defines "Internal Revenue Code," for purposes of the 2012 tax year, as "the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January 2012." I.C. § 63-3004 (2012 version) (emphasis added).

Third, when a term is not defined in the Idaho Income Tax Act, a Tax Commission regulation, IDAPA 35.01.01.010.08, adopts any definition of the term that is set forth in the Internal Revenue Code, particularly in Internal Revenue Code § 7701 (*i.e.*, 26 U.S.C. § 7701). Section 7701 defines "Internal Revenue Code of 1986" as "this title," meaning Title 26 of the United States Code. 26 U.S.C. § 7701(a)(29) (emphasis added).

Taking these three definitions together, the Estate argues that, for purposes of the Idaho Income Tax Act, a taxpayer's federal taxable income must be calculated solely according to the

provisions of Title 26 of the United States Code. So, any "off-code" provision that bears on calculating a taxpayer's federal taxable income for federal income tax purposes must be disregarded in calculating its federal taxable income for Idaho income tax purposes. Consequently, according to the Estate, a taxpayer's federal taxable income can be different for Idaho purposes than for federal purposes.

The fourth and final definition that comes into play is an already-recited one, under which "Idaho taxable income" means federal taxable income, as modified by the Idaho adjustments "specifically provided" in the Idaho Income Tax Act. I.C. § 63-3011C. The Idaho Income Tax Act need not, however, contain a "specifically provided" adjustment under the Estate's argument, as the first three definitions call for recalculating its federal taxable income, even though none of the adjustments to federal taxable income provided for by section 63-3022 (and the other sections it references) is applicable. Thus, the Estate has, it thinks, an end-run around the *Potlatch* rule that Idaho taxable income equals federal taxable income, except to the extent section 63-3022 specifically provides for adjusting federal taxable income in calculating Idaho taxable income.

The Court can follow and appreciate how the Estate arrives at this conclusion. But the Court is not convinced the Idaho legislature actually intended a statutory scheme in which a taxpayer's federal taxable income for purposes of its federal tax return may differ from its federal taxable income for purposes of its Idaho tax return. The Court suspects the Estate finds in these definitions a limiting principle the Idaho legislature didn't intend. Likelier that not, it strikes the Court, the legislature didn't recognize the potential for so-called "off-code" provisions to play a role in calculating federal taxable income for purposes of federal law. The legislature probably didn't make a conscious decision that "off-code" provisions should be disregarded for purposes of

the Idaho Income Tax Act, so that a taxpayer's federal taxable income might be different for purposes of the Idaho Income Tax Act than it is on the taxpayer's federal income tax return. Instead, the legislature probably has continued since *Potlatch* to have precisely the intent the Idaho Supreme Court ascribed to it in that case: that "Idaho taxable income is the same as federal taxable income," except to the extent I.C. § 63-3022 directs adjusting federal taxable income in calculating Idaho taxable income. *Potlatch*, 128 Idaho at 389, 913 P.2d at 1159.

The Court might have ruled against the Estate for this reason. But, in ruling against the Estate, the Court didn't reach the issue of whether "off-code" provisions are to be disregarded, as the Estate says. The Court still need not, and does not, reach that issue in deciding the Estate's motion to reconsider. For reasons explained in this decision's next section, TRUIRJCA § 301(c), under which the Estate calculated its federal taxable income, though not part of the section text of any section of Title 26, is part of Title 26 as a statutory note to 26 U.S.C. § 2001. Consequently, the Estate's argument that "off-code" provisions are disregarded in calculating a taxpayer's federal taxable income for purposes of the Idaho Income Tax Act, even if accepted as true, isn't outcome-determinative, as the Estate's federal taxable income wasn't calculated according to a provision of federal law of a sort that can be disregarded as an "off-code" provision. Hence, the Estate wasn't entitled to recalculate its federal taxable income for purposes of the Idaho Income Tax Act.

C. TRUIRJCA § 301(c) is part of Title 26.

TRUIRJCA § 301(c) provides for what is called the "Section 1022 Election." By making the Section 1022 Election, an estate of a decedent dying during 2010, as Zippora Stahl did, could avoid paying estate tax. In return, though, such an estate would be required to pay income tax on

sales of appreciated property under "repealed" Section 1022 of the Internal Revenue Code's unfavorable "modified carryover basis" regime, instead of being able to claim the more favorable "stepped-up basis" that otherwise is allowed by Section 1014(a)(1) of the Internal Revenue Code. The Estate made the Section 1022 Election. Consequently, for federal income tax purposes, it calculated its taxable gain on its 2012 sale of the Chino property under "repealed" Section 1022. Contending TRUIRJA § 301(c) is an "off-code" provision of federal law that wasn't incorporated into the Idaho Income Tax Act, for purposes of the Idaho Income Tax Act the Estate recalculated its federal taxable gain on that sale under Section 1014(a)(1). Consequently, as already noted, it reported a dramatically smaller taxable gain on its amended 2012 Idaho tax return than it had reported on its 2012 federal tax return (and on its original 2012 Idaho return).

In briefing their cross-motions for summary judgment, the parties framed their dispute as whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year. In deciding the motions, the Court agreed with the Estate's characterization of TRUIRJCA § 301(c) as an "off-code" provision of federal law, by which the Court meant a provision that isn't part of the Internal Revenue Code of 1986 (Mem. Decision & Order 10), which, as discussed below, is distinct from Title 26 of the United States Code. The Court did not, however, reach the issue of whether TRUIRJCA § 301(c) is part of Title 26, nor of whether it was incorporated into the Idaho Income Tax Act. The Court concluded the litigation could be resolved by determining, instead, whether "repealed" Section 1022 was incorporated into the Idaho Income Tax Act for the 2012 tax year. The Court determined that "repealed" Section 1022 was so incorporated, meaning the Estate wrongly contending its federal taxable gain had been calculated under an "off-code"

provision of federal law, negating the premise of its argument for allowing it to recalculate that gain for purposes of the Idaho Income Tax Act.

The initial series of briefs on the Estate's motion to reconsider sensibly focused on whether the Court's analysis in that regard was correct. One of the Estate's arguments, however, caused the Court to see in a new light the issue the parties had originally asked the Court to decide but the Court had seen as unnecessary to decide: whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year. The Court therefore asked for supplemental briefing on two questions related to that issue: (i) whether TRUIRJCA § 301(c), as a statutory note to a section of Title 26, is part of Title 26; and (ii) if so, whether it was incorporated into the Idaho Income Tax Act. Having reviewed the parties' supplemental briefs, the Court concludes it should have decided whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year, as the parties originally asked. The Court proceeds to decide that issue now, as it furnishes an independent ground for determining that the Tax Commission is entitled to summary judgment. Consequently, no further discussion of the conceptually distinct basis on which the Court initially resolved the case is either necessary or productive.

To decide whether TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act for the 2012 tax year, the Court first must determine whether it was part of Title 26 on January 1, 2012. Indeed, as explained in this decision's section B, the Estate itself argues—and correctly so—that Title 26, as it existed on January 1, 2012, was incorporated into the Idaho Income Tax Act for the 2012 tax year.

In that regard, the Estate introduced uncontested evidence that TRUIRJCA § 301(c), enacted by Congress in 2010, was classified by the Office of Law Revision Counsel of the United

States House of Representatives as a "statutory note" under 26 U.S.C. § 2001 (Seep Aff. ¶ 3), not as part of the section text of section 2001 or any other section of Title 26. The Office of Law Revision Counsel's "principal purpose [is] to develop and keep current an official and positive codification of the laws of the United States," 2 U.S.C. § 285a. In other words, it codifies federal laws once Congress enacts them. Is a statutory note classified by the Office of Law Revision Counsel to a section of Title 26 part of Title 26? Yes, it is. The reasons for this conclusion follow. First, though, the Court notes that Exhibit A to this decision is a printout of the official online version of 26 U.S.C. § 2001 maintained by the Office of Law Revision Counsel. As the sixth page of the printout shows, TRUIRJCA § 301(c) is part of it (albeit not as section text). The printout may help a reader visualize and understand what a "statutory note" is, a subject the Court will address next, as it explains more fully what the Office of Law Revision Counsel does.

The Office of Law Revision Counsel's principal purpose, as already noted, is codifying federal laws. *See* 2 U.S.C. § 285a. In executing that duty, the Office of Law Revision Counsel must "classify newly enacted provisions of law to their proper positions in the [United States] Code where the titles involved have not yet been enacted into positive law," 2 U.S.C. § 285b(4) (emphasis added), as is true of Title 26. *See* 1 U.S.C. § 204 note. "Classification is the process of deciding which laws are included in the [United States] Code and where they are to be placed." Office of Law Revision Counsel, *Frequently Asked Questions and Glossary*, Glossary http://uscode.house.gov/faq.xhtml (last visited Nov. 9, 2015). After deciding which laws to classify to the United States Code and where to place them, the Office of Law Revision Counsel communicates its work by "prepar[ing] and publish[ing] periodically a new edition of the United States Code." 2 U.S.C. § 285b(3).

Not all new laws are classified to the United States Code as code sections. Some new laws instead are classified to the United States Code as statutory notes, and some are not even classified to the United States Code at all. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). If a new law is a "freestanding provision"—*i.e.*, a provision that doesn't amend a law already in the United States Code—the Office of Law Revision Counsel first decides whether to classify it to the United States Code at all. *Id.* TRUIRJCA § 301(c) is a freestanding provision (Seep Aff. ¶ 3), so that decision had to be made about it.

If the Office of Law Revision Counsel decides to classify a freestanding provision to the United States Code, the next decision it must make is where to place the provision in the United States Code. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). One aspect of that decision is determining whether the provision should be classified as a code section or, instead, as a statutory note. *Id.* "[T]he decision to classify a freestanding provision as a section or a statutory note is an editorial judgment." *Id.* That decision "does not in any way affect the provision's meaning or validity." *Id.* In other words, the laws Congress enacts are effective, regardless of where (or even whether) they are placed in the United States Code by the Office of Law Revision Counsel. TRUIRJCA § 301(c), as already noted, was classified as a statutory note to 26 U.S.C. § 2001. (Seep Aff. ¶ 3.)

"A statutory note is a provision of law set out as a note," usually following a code section. Office of Law Revision Counsel, *Frequently Asked Questions and Glossary*, Glossary, http://uscode.house.gov/faq.xhtml (last visited Nov. 9, 2015) (emphasis added); *see also* Office of

the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, § IV, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015) ("Statutory notes are provisions of law that are set out as notes under a Code section rather than as a [United States] Code section."). Statutory notes are distinguished from editorial notes, in that the former, as just explained, are provisions of law enacted by Congress, whereas the latter "are prepared by the [Office of Law Revision Counsel] to assist users of the [United States] Code." Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, §§ IV-V, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015). Thus, a statutory note is (i) a provision of law enacted by Congress, (ii) that was classified to the United States Code by the Office of Law Revision Counsel, and (iii) that appears in the United States Code following a code section rather than as section text.

TRUIRJCA § 301(c) is indisputably all of these things, as the Estate's own evidence shows. The unstricken portion of paragraph 3 of the Affidavit of Ralph V. Seep, the Law Revision Counsel himself, establishes that TRUIRJCA § 301(c) is a provision of law classified to the United States Code as a statutory note to 26 U.S.C. § 2001.[1] Moreover, the Estate has twice placed in the record an e-mail from Seep to the Estate's counsel, in which Seep states that the

[1] The Estate asks the Court to reverse its ruling striking the balance of paragraph 3, contending the stricken portions help its argument that TRUIRJCA § 301(c) isn't part of Title 26. (Pl.'s Suppl. Br. 8 n. 8.) The Court declines to reverse that ruling. The stricken portions lack foundation and aren't admissible for that reason. That said, after many hours of studying the issues this action presents, the Court has been able to discern the probable reasoning behind Seep's assertions in the stricken portions of paragraph 3, and the Court doesn't disagree with them. They do not, however, support the proposition that a statutory note to a section of Title 26 isn't part of Title 26. Seep neither said nor implied that. Thus, even if the Court were to reverse its ruling striking part of paragraph 3, this action's outcome would not change.

Office of Law Revision Counsel "decided to place §301(c) in the United States Code as a statutory note under 26 USC 2001." (Marshall Aff. Ex. A; Rice Aff. Ex. A (emphasis added).) There is no reason to think Seep used the phrase "in the United States Code" carelessly or nonliterally. Indeed, the Office of Law Revision Counsel's website repeatedly characterizes statutory notes as appearing or being included in the United States Code:

- "[T]he Code includes statutory provisions set out as statutory notes . . . ." Office of the Law Revision Counsel, *Detailed Guide to the United States Code Content and Features*, § I, http://uscode.house.gov/detailed_guide.xhtml (last visited Nov. 9, 2015) (emphasis added).
- "Whether a provision in an act . . . appears in the Code as a section or as a statutory note is an editorial decision based on a number of factors." *Id.* § IV (emphasis added).
- "A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note . . . ." *Id.* § IV(E) (emphasis added).
- "Statutory notes are provisions from laws that are placed in the Code so as to follow the text of a Code section." Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015) (emphasis added).
- "If a provision amends a . . . statutory note in the Code, it is classified to that . . . note." *Id.* (emphasis added).
- "A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note . . . ." *Id.* (emphasis added).

The conclusion cannot be avoided that, as a statutory note to 26 U.S.C. § 2001, TRUIRJCA § 301(c) is part of Title 26 of the United States Code. The Estate, though, tries in several ways to avoid the unavoidable. The problems with its arguments are explained below.

First, the Estate argues that considering statutory notes to be part of Title 26 would amount to sanctioning an unauthorized delegation to the Office of Law Revision Counsel of congressional authority to amend Title 26. (Pl.'s Suppl. Br. 2.) This is so, the Estate argues, because editorial

notes—which, as discussed above, are not provisions of law—also would have to be considered part of Title 26. It is not clear why statutory notes and editorial notes must stand on equal footing in this regard. Whether editorial notes are part of the United States Code, in the same way that statutory notes are, is beyond the scope of this case, which involves only a statutory note. Since the statutory note at issue, like all statutory notes, is an enactment of Congress, giving it effect was Congress's will. Considering it to be part of Title 26 doesn't mean Congress impermissibly delegated to the Office of Law Revision Counsel its authority to amend Title 26. To the contrary, Congress expressly and permissibly delegated to the Office of Law Revision Counsel the task of "classify[ing] newly enacted provisions of law to their proper positions in the Code where"—as here—"the titles involved have not yet been enacted into positive law." 2 U.S.C. § 285b(4).

Second, the Estate argues that considering statutory notes to be part of Title 26 would create differences between Title 26, on one hand, and the separately enacted, positive-law code called the "Internal Revenue Code of 1986,"[2] on the other hand, as there are no statutory notes to the latter. (Pl.'s Suppl. Br. 2-6.) The sameness of Title 26 and the Internal Revenue Code of

[2] "[T]here is a difference between the individual positive law statute entitled the Internal Revenue Code of 1986 and Title 26 of the United States Code. The Internal Revenue Code of 1986 is a statute enacted into positive law by congress, while the United States Code, including Title 26, is a statutory compilation by subject of enacted statutes." *O'Boyle v. United States*, 2007 WL 2113583, at *1 (S.D. Fla. July 23, 2007) (citing 1 U.S.C. § 204(a) and the note that follows it). In other words, the Internal Revenue Code of 1986 is a "separate code" from Title 26, though their section text is identical. 1 U.S.C. § 204 note. This presumably accounts for Seep's statements, which seem conflicting at first, that TRUIRJCA § 301(c) isn't part of the Internal Revenue Code of 1986 (Seep Aff. ¶ 3 (stricken portion); Marshall Aff. Ex. A; Rice Aff. Ex. A) but was placed "in the United States Code" as a statutory note to a section of Title 26. (Marshall Aff. Ex. A; Rice Aff. Ex. A.) TRUIRJCA § 301(c) isn't part of the individual statute enacted by Congress and called the "Internal Revenue Code of 1986," but it nevertheless is part of the compilation of statutes the Office of Law Revision Counsel has placed in Title 26, some as statutory notes.

1986, however, is limited to their section text. *See* 1 U.S.C. § 204 note ("The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code."); *United States v. McLain*, 597 F. Supp.2d 987, 994 n. 6 (D. Minn. 2009) ("[T]he relevant sections of Title 26 are identical to the relevant sections of the Internal Revenue Code."). Their section text is no less identical if statutory notes are considered to be part of Title 26; statutory notes are not part of, and do not constitute amendments to, section text.[3] Statutory notes do, however, constitute valid and binding federal law, enacted by Congress and placed in the United States Code (sometimes in Title 26) by the Office of Law Revision Counsel. The Estate doesn't explain why it's the slightest bit problematic to the administration of federal tax laws to recognize that Title 26 contains some law—*i.e.*, statutory notes—that isn't also part of the Internal Revenue Code of 1986.

Third, the Estate argues that statutory notes aren't part of the United States Code because some federal cases characterize statutory notes as uncodified. (Pl.'s Suppl. Br. 6-7.) The Estate identifies three federal cases characterizing a statutory note in that way. The Estate doesn't mention, however, that numerous federal cases characterize statutory notes as codified. A comprehensive listing won't be attempted here. Scratching the surface, the Court lists some of the circuit-level cases that do so—*Lezama-Garcia v. Holder*, 666 F.3d 518, 521 n. 1 (9th Cir. 2011), *Benoit v. United States Dep't of Agric.*, 608 F.3d 17, 19 (D.C. Cir. 2010), *Aldana v. Del*

[3] As already noted, TRUIRJCA § 301(c) was determined by the Office of Law Revision Counsel to be a "freestanding" provision (Seep Aff. ¶ 3), meaning it isn't an amendment to any section of the United States Code. Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). Had it amended section text, it wouldn't have been classified as a statutory note. *Id.* ("If a provision amends a section . . . in the Code, it is classified to that section . . . .").

Monte Fresh Produce N.A., Inc., 578 F.3d 1283, 1287 (11th Cir. 2009), *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 979 (9th Cir. 2007), *United States v. Hristov*, 396 F.3d 1044, 1045 (9th Cir. 2005), and *Conyers v. Merit Sys. Prot. Bd.*, 388 F.3d 1380, 1382 n. 2 (Fed. Cir. 2004)—as well as a lower-court case that characterized a statutory note to a section of Title 26 (26 U.S.C. § 62) as "codified," *Dacosta v. United States*, 82 Fed. Cl. 549, 553 n. 6 (2008). The weight of authority is that statutory notes are indeed codified (though not as section text). And, again, their force and effect is equal to that of section text. The Court holds that a federal statute becomes codified when it is placed in the United States Code, as either section text or a statutory note, by the Office of Law Revision Counsel, in executing its statutory duty to "classify newly enacted provisions of law to their proper positions in the Code." 2 U.S.C. § 285b(4).

Fourth, and finally, the Estate suggests that some statements on the Office of Law Revision Counsel's website, unlike those the Court sets out above, support the conclusion that statutory notes aren't part of the United States Code. (Pl.'s Suppl. Br. 7-8.) The two particular statements the Estate recites, though, don't support its conclusion. One of them merely distinguishes statutory notes from section text, in that statutory notes are set out under a code section; it doesn't say or imply that, being set out under a code section, a statutory note isn't part of the United States Code. The second statement explains that some statutory notes reflect provisions of law that are somewhat less than general or permanent in nature but nevertheless are classified to a code section because of their relationship to the code section. The Estate deems TRUIRJCA § 301(c) neither general nor permanent in nature. On that basis, it suggests the Office of Law Revision Counsel has violated 1 U.S.C. § 204(a), which calls for codifying laws that general and permanent in nature, if TRUIRJCA § 301(c) is considered part of Title 26. In

deciding whether to classify a freestanding provision of law to the United States Code, however, the Office of Law Revision Counsel must make a sometimes-difficult judgment call about whether it belongs there. Office of the Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). The judgment call it made here was to classify TRUIRJCA § 301(c) as a statutory note to 26 U.S.C. § 2001. The Office of Law Revision Counsel's decision in that regard settles whether TRUIRJCA § 301(c) is part of Title 26. It is part of Title 26.

D. TRUIRJCA § 301(c) was incorporated into the Idaho Income Tax Act.

Because TRUIRJCA § 301(c) is part of Title 26, the question becomes whether it was incorporated into the Idaho Income Tax Act for the 2012 tax year. This is a straightforward question whose answer isn't in any doubt.

In this decision's section B, the Court analyzed a chain of interrelated definitions of relevant terms, concluding, exactly as the Estate argues, that any provision of Title 26 that was in effect on January 1, 2012, was incorporated into the Idaho Income Tax Act for the 2012 tax year. TRUIRJCA § 301(c) was enacted as part of Public Law No. 111-312 on December 17, 2010. The record doesn't reveal the precise date on which the Office of Law Revision Counsel placed it in Title 26 as a statutory note to 26 U.S.C. § 2001. The Estate doesn't argue, though, that the classification process was still ongoing after January 1, 2012. In fact, the Office of Law Revision Counsel's website indicates that TRUIRJCA § 301(c) had been classified to the United States Code as a statutory note to 26 U.S.C. § 2001 not later than January 7, 2011. Office of Law Revision Counsel, *United States Code Table of Classifications for Public Laws, 111th Congress, 2nd Session*, http://uscode.house.gov/classification/tbl111pl_2nd.htm (last visited Nov. 9, 2015).

Accordingly, I.C. § 63-3004's conditions for incorporation are satisfied: TRUIRJCA § 301(c) is part of Title 26, and it was in effect on January 1, 2012.

Beyond disagreeing with the premise that TRUIRJCA § 301(c) is part of Title 26, the Estate offers three arguments against the conclusion that it was validly incorporated into the Idaho Income Tax Act for the 2012 tax year.

The first argument is that if I.C. § 63-3004 is deemed to incorporate into the Idaho Income Tax Act not only Title 26 itself, but also amendments to Title 26 that aren't set forth in Title 26, that would amount to an "amendatory reference" in violation of article III, § 18 of the Idaho Constitution. (E.g., Pl.'s Mem. Supp. Mot. Partial Summ amendments to Title 26 that aren't set forth in Title 26. J. 20-22; Pl.'s Mem. Supp. Mot. Reconsideration 18-19.) But, as the Court already has held, TRUIRJCA § 301(c) is part of Title 26 itself. That fact seemingly negates the premise of the Estate's "amendatory reference" argument. Regardless, article III, § 18 prohibits only amending statutes without setting forth in full the statute being amended. *Noble v. Bragaw*, 12 Idaho 265, 273, 95 P. 803, 904 (1906). No amendment to section 63-3004 itself is argued to suffer from any such infirmity. Moreover, TRUIRJCA § 301(c) is a freestanding provision of federal law (Seep Aff. ¶ 3), meaning it doesn't amend any provision of the United States Code. Office of Law Revision Counsel, *About Classification of Laws to the United States Code*, http://uscode.house.gov/about_classification.xhtml (last visited Nov. 9, 2015). Section 63-3004's incorporation into the Idaho Income Tax Act of a non-amendatory provision of federal law doesn't violate Idaho's constitutional ban on "amendatory references."

The Estate's second argument is that the Idaho legislature supposedly didn't intend to incorporate statutory notes. (Pl.'s Suppl. Br. 8-9.) The basis for that argument is that the Idaho

Income Tax Act repeatedly uses the term "Internal Revenue Code" or "Internal Revenue Code of 1986" rather than the term "Title 26," thus supposedly evincing the intent to incorporate only Title 26's section text, and not its statutory notes, inasmuch as the statutory notes aren't part of the separately enacted, positive-law statute called "the Internal Revenue Code of 1986." It is true that the Idaho Income Tax Act itself doesn't use the term "Title 26." But, by virtue of IDAPA 35.01.01.010.08, which the Tax Commission adopted in 1997, the term "Internal Revenue Code of 1986" means Title 26 for purposes of the Idaho Income Tax Act. The Tax Commission was authorized by the legislature to adopt that regulation. I.C. § 63-3039(1), (2). Moreover, the legislature, which can be presumed to know about the regulation and has unquestioned power to override it, hasn't exercised that power. The Estate identifies no grounds on which the Court could decline to enforce the regulation, the effect of which, as already explained, is to define the term "Internal Revenue Code of 1986" in a way that encompasses statutory notes to Title 26.

Finally, the Estate's third argument is the incorporation of Title 26's statutory notes is insufficiently clear, bringing to bear the rule that, in the event of ambiguity, tax statutes must be construed in the taxpayer's favor. (Pl.'s Suppl. Br. 9-10.) But that rule of construction applies only when the statute's meaning is "so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning." *See, e.g., Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 182, 59 P.3d 983, 987 (2002). That isn't the case here. The Court agrees with the Estate's own argument that Title 26 was incorporated into the Idaho Income Tax Act by virtue of a series of unambiguous statutory and regulatory definitions of terms. There is no hint of a limiter in any of those definitions, to the effect that only the text of Title 26's sections, and not its statutory notes, are incorporated. The Court lacks authority to create an otherwise-nonexistent limiter.

Moreover, that the incorporation of Title 26's statutory notes could have been accomplished through different, more express statutory or regulatory language isn't significant; the chosen language plainly accomplishes incorporation of Title 26's statutory notes by not excluding portions of Title 26 from the incorporation.

Here, it makes sense to return to the analysis in this decision's section A, in which the Court identified, as the Idaho Supreme Court had done in *Potlatch*, a clear legislative mandate that federal taxable income and Idaho taxable income be equal, except as "specifically provided" in the Idaho Income Tax Act. I.C. § 63-3004. The Idaho Income Tax Act doesn't "specifically provide[ ]" for disregarding some parts of Title 26, so that a taxpayer can recalculate its federal taxable income, for purposes of the Idaho Income Tax Act, from the taxable income the taxpayer was required by Title 26, in its entirety, to report on its federal tax return. Instead, the Idaho Income Tax Act requires that a taxpayer's baseline taxable income—meaning, its taxable income before considering the adjustments to federal taxable income provided for by section 63-3022 (and the sections it references)—be the same as the federal taxable income Title 26 required the taxpayer to report on its federal tax return.

The Estate's arguments to the contrary are clever. They reflect highly skilled lawyering. But they ask the Court to recognize a loophole—one that just isn't there—in the well-established rule equating Idaho taxable income with federal taxable income, except as specifically provided in the Idaho Income Tax Act. The Estate's arguments don't carry the day for that reason.

The Court's prior grant of summary judgment to the Tax Commission stands, supplemented by the independent ground for summary judgment set forth in this decision.

Accordingly,

IT IS ORDERED that the Estate's motion to reconsider and to amend the judgment is denied.

Dated this 16th day of November, 2015.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November 2015, I mailed (served) a true and correct copy of the within instrument to:

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CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

EXHIBIT A

26 USC 2001: Imposition and rate of tax
Text contains those laws in effect on November 4, 2015

From Title 26-INTERNAL REVENUE CODE
Subtitle B-Estate and Gift Taxes
CHAPTER 11-ESTATE TAX
Subchapter A-Estates of Citizens or Residents
PART I-TAX IMPOSED

Jump To:

§2001. Imposition and rate of tax

(a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of-

(1) a tentative tax computed under subsection (c) on the sum of-

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000	$8,200 plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.

Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000	$345,800, plus 40 percent of the excess of such amount over $1,000,000.

(d) Adjustment for gift tax paid by spouse

For purposes of subsection (b)(2), if-

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035

If-

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) Valuation of gifts

(1) In general

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on-

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if-

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) Modifications to gift tax payable to reflect different tax rates

For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute-

(1) the tax imposed by chapter 12 with respect to such gifts, and

(2) the credit allowed against such tax under section 2505, including in computing-

(A) the applicable credit amount under section 2505(a)(1), and

(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

(Aug. 16, 1954, ch. 736, 68A St[redacted]373; Pub. L. 94–455, title XX, §2001(a)([redacted]), Oct. 4, 1976, 90 Stat. 1846 ; Pub. L. 95–600, title VII, §702(h)(1), Nov. 6, 1978, 92 Stat. 2930 ; Pub. L. 97–34, title IV, §402(a)–(c), Aug. 13, 1981, 95 Stat. 300 ; Pub. L. 98–369, div. A, title I, §21(a), July 18, 1984, 98 Stat. 506 ; Pub. L. 100–203, title X, §10401(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–430 , 1330-431; Pub. L. 103–66, title XIII, §13208(a)–(b)(2), Aug. 10, 1993, 107 Stat. 469 ; Pub. L. 105–34, title V, §§501(a)(1)(D), 506(a), Aug. 5, 1997, 111 Stat. 845 , 855; Pub. L. 105–206, title VI, §6007(e)(2)(B), July 22, 1998, 112 Stat. 810 ; Pub. L. 105–277, div. J, title IV, §4003(c), Oct. 21, 1998, 112 Stat. 2681–909 ; Pub. L. 107–16, title V, §511(a)–(c), June 7, 2001, 115 Stat. 70 ; Pub. L. 111–312, title III, §302(a)(2), (d)(1), Dec. 17, 2010, 124 Stat. 3301 , 3302; Pub. L. 112–240, title I, §101(c)(1), Jan. 2, 2013, 126 Stat. 2317 .)

AMENDMENTS

2013-Subsec. (c). Pub. L. 112–240 substituted in table separate tentative tax rates for amounts over $500,000 but not over $750,000, over $750,000 but not over $1,000,000, and over $1,000,000, respectively, for single tentative tax rate for amounts over $500,000.

2010-Subsec. (b)(2). Pub. L. 111–312, §302(d)(1)(A), substituted "if the modifications described in subsection (g)" for "if the provisions of subsection (c) (as in effect at the decedent's death)".

Subsec. (c). Pub. L. 111–312, §302(a)(2), struck out par. (1) designation and heading preceding table, substituted in table a single tentative tax rate for any amount over $500,000 for separate tentative tax rates for amounts ranging from over $500,000 to over $2,500,000, and struck out par. (2) which related to phasedown of maximum rate of tax.

Subsec. (g). Pub. L. 111–312, §302(d)(1)(B), added subsec. (g).

2001-Subsec. (c)(1). Pub. L. 107–16, §511(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000 for provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000, and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000.

Subsec. (c)(2). Pub. L. 107–16, §511(c), added par. (2).

Pub. L. 107–16, §511(b), struck out heading and text of par. (2). Text read as follows: "The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent."

1998-Subsec. (f). Pub. L. 105–206, §6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If-

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

Subsec. (f)(2). Pub. L. 105–277 inserted concluding provisions.

1997-Subsec. (c)(2). Pub. L. 105–34, §501(a)(1)(D), substituted "the amount at which the average tax rate under this section is 55 percent" for "$21,040,000".

Subsec. (f). Pub. L. 105–34, §506(a), added subsec. (f).

1993-Subsec. (c)(1). Pub. L. 103–66, §13208(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000 and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000 for provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000.

Subsec. (c)(2), (3). Pub. L. 103–66, §13208(b)(1), (2), redesignated par. (3) as (2), struck out "($18,340,000 in the case of decedents dying, and gifts made, after 1992)" after "exceed $21,040,000", and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987-Subsec. (b)(1). Pub. L. 100–203, §10401(b)(2)(A)(i), substituted "under subsection (c)" for "in accordance with the rate schedule set forth in subsection (c)".

Subsec. (b)(2). Pub. L. 100-[redacted]8, §10401(b)(2)(A)(ii), substituted "the provisions of subsec. (c)" for "the rate schedule set forth in subsection (c)".

Subsec. (c)(2)(A). Pub. L. 100–203, §10401(a)(1), substituted "1993" for "1988".

Subsec. (c)(2)(D). Pub. L. 100–203, §10401(a)(2), (3), substituted in heading "After 1983 and before 1993" for "For 1984, 1985, 1986, or 1987", and in text "after 1983 and before 1993" for "in 1984, 1985, 1986, or 1987".

Subsec. (c)(3). Pub. L. 100–203, §10401(b)(1), added par. (3).

1984-Subsec. (c)(2)(A), (D). Pub. L. 98–369 substituted "1988" for "1985" in subpar. (A) and substituted "1984, 1985, 1986, or 1987" for "1984" in heading and text of subpar. (D).

1981-Subsec. (b)(2). Pub. L. 97–34, §402(c), inserted "which would have been" before "payable" and ", if the rate schedule set forth in subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts" after "December 31, 1976,".

Subsec. (c). Pub. L. 97–34, §402(a), (b)(1), designated existing provision as par. (1), inserted heading "In general" and substituted in table provision that if the amount computed is over $2,500,000 then the tentative tax is $1,025,800 plus 50% of the excess over $2,500,000 for provisions that if the amount computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800 plus 53% of the excess over $2,500,000, over $3,000,000 but not over $3,500,000 then the tentative tax is $1,290,000 plus 57% of the excess over $3,000,000, over $3,500,000 but not over $4,000,000 then the tentative tax is $1,575,800 plus 61% of the excess over $3,500,000, over $4,000,000 but not over $4,500,000 then the tentative tax is $1,880,800 plus 65% of the excess over $4,000,000, over $4,500,000 but not over $5,000,000 then the tentative tax is $2,205,800 plus 69% of the excess over $4,500,000, over $5,000,000 then the tentative tax is $2,550,800 plus 70% of the excess over $5,000,000, and added par. (2).

1978-Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976-Pub. L. 94–455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first $10,000 in taxable transfers to 70 percent of taxable transfers in excess of $5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first $5,000 of the taxable estate to 77 percent of the taxable estate in excess of $10,000,000.

Effective Date of 2013 Amendment

Pub. L. 112–240, title I, §101(c)(3), Jan. 2, 2013, 126 Stat. 2318 , provided that:

"(A) In general.-Except as otherwise provided by in this paragraph, the amendments made by this subsection [amending this section and section 2010 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

"(B) Technical correction.-The amendment made by paragraph (2) [amending section 2010 of this title] shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312]."

Effective Date of 2010 Amendment

Pub. L. 111–312, title III, §302(f), Dec. 17, 2010, 124 Stat. 3302 , as amended by Pub. L. 113–295, div. A, title II, §206(b)(2), Dec. 19, 2014, 128 Stat. 4027 , provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 2010, 2502, 2505 and 2511 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009."

Effective Date of 2001 Amendment

Pub. L. 107–16, title V, §511(f)(1), (2), June 7, 2001, 115 Stat. 71 , provided that:

"(1) Subsections (a) and (b).-The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

"(2) Subsection (c).-The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002."

Effective Date of 1998 Amendments

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Effective Date of 1997 Amendment

Pub. L. 105–34, title V, §501(f), Aug. 5, 1997, 111 Stat. 847 , as amended by Pub. L. 105–206, title VI, §6007(a)(2), July 22, 1998, 112 Stat. 807 , provided that: "The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997."

Pub. L. 105–34, title V, §506(e)(1), Aug. 5, 1997, 111 Stat. 856 , as amended by Pub. L. 105–206, title VI, §6007(e)(1), July 22, 1998, 112 Stat. 809 , provided that: "The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997]."

Effective Date of 1993 Amendment

Pub. L. 103–66, title XIII, §13208(c), Aug. 10, 1993, 107 Stat. 469 , provided that: "The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992."

Effective Date of 1987 Amendment

Pub. L. 100–203, title X, §10401(c), Dec. 22, 1987, 101 Stat. 1330–431 , provided that: "The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987."

Effective Date of 1984 Amendment

Pub. L. 98–369, div. A, title I, §21(b), July 18, 1984, 98 Stat. 506 , provided that: "The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983."

Effective Date of 1981 Amendment

Pub. L. 97–34, title IV, §402(d), Aug. 13, 1981, 95 Stat. 301 , provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981."

Effective Date of 1978 Amendment

Pub. L. 95–600, title VII, §702(h)(3), Nov. 6, 1978, 92 Stat. 2931 , provided that: "The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977."

Effective Date of 1976 Amendment

Pub. L. 94–455, title XX, §2001(d)(1), Oct. 4, 1976, 90 Stat. 1854 , provided that: "The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977."

Short Title

Pub. L. 91–614, §1(a), Dec. 31, 1970, 84 Stat. 1836 , provided that: "This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under

sections 56, 2032, 2204, 2501, [illegible]3, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'."

Special Election With Respect to Estates of Decedents Dying in 2010

Pub. L. 111–312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300 , provided that: "Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection."

Clarification of Treatment of Certain Exemptions for Purposes of Federal Estate and Gift Taxes

Pub. L. 98–369, div. A, title VI, §641, July 18, 1984, 98 Stat. 939 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that:

"(a) General Rule.-Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(b) Effective Date.-

"(1) In general.-The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

"(2) Treatment of certain transfers treated as taxable.-The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

"(3) No inference.-No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes."

Reports With Transfers of Public Housing Bonds

Pub. L. 98–369, div. A, title VI, §642, July 18, 1984, 98 Stat. 939 , provided that:

"(a) General Rule.-With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

"(b) Penalty for Failure to Report.-Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject."