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IN THE SUPREME COURT FOR THE STATE OF IDAHO

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

Plaintiff-Appellant,

v.

IDAHO STATE TAX COMMISSION,

Defendant-Respondent.

SUPREME COURT NO. 43832
DISTRICT COURT NO. CV-OC-2015-00106

APPELLANT ESTATE OF ZIPPORA STAHL'S REPLY BRIEF ON APPEAL

APPELLANT'S REPLY BRIEF

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

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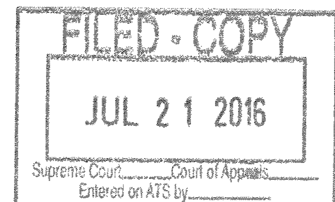

TABLE OF CONTENTS

I. INTRODUCTION..6

II. RECAP OF LEGAL FRAMEWORK AND RELEVANT FACTS..........................7

III. IDAHO CODE § 63-3002 DOES NOT IMPOSE A MANDATE REQUIRING TAXPAYERS TO REPORT IDENTICAL AMOUNTS OF TAXABLE INCOME TO THE STATE OF IDAHO AND THE IRS......................................8

A. The Plain Language of I.C. § 63-3002 Does Not Mandate that Taxable Income Always Be Equal to the Amount Reported on a Taxpayer's Federal Income Tax Return..9

B. The Tax Commission's Interpretation of § 63-3002 Contradicts the Express Language and Clearly Crafted Structure of the Idaho Act and Violates the Presumption that the Legislature Does Not Enact Superfluous Statutes..11

C. Idaho Code §§ 63-3011B and 63-3004 Underpin the Constitutionality of the Idaho Act..13

D. Idaho Case Law Does Not Support the Proposition that "Taxable Income" Always Be Equal to the Amount Reported on a Taxpayer's Federal Income Tax Return..14

IV. PLAIN LANGUAGE OF THE IDAHO ACT (PARTICULARLY I.C. §§ 63-3004 AND 63-3011B) DO NOT REQUIRE THE ESTATE TO REPORT THE SAME AMOUNT OF TAXABLE INCOME TO THE IRS AND IDAHO..........................18

A. There Is No Way to Read the Literal Words of I.C. §§ 63-3004 and 63-3011B as Defining Taxable Income to Be the Amount Reported on the Taxpayer's Federal Income Tax Return Rather than the Amount of Federal Taxable Income Calculated Pursuant to the Internal Revenue Code..................18

B. The Commission Asks this Court To Ignore the Literal Words of §§ 63-3004 and 63-3011B..20

V. I.C. § 63-3011C DOES NOT REQUIRE ALL DEVIATIONS BETWEEN FEDERAL INCOME TAX AND IDAHO STATE INCOME TAX REPORTING TO

BE "SPECIFICALLY PROVIDED" IN THE IDAHO ACT....22

VI. THE PUBLIC LAW ELECTION IS NOT INCORPORATED INTO THE IDAHO ACT BY I.C. § 63-3004....24

A. The Commission Agrees That the Public Law Election Is Not Part of the Internal Revenue Code....25

B. The Phrase "Internal Revenue Code of 1986" Includes Only the Statutes that Comprise the Internal Revenue Code....26

C. The IDAPA Definition Does Not Convert I.C. § 63-3004's Reference to "Internal Revenue Code of 1986" into a Reference to "Title 26 of the United States Code"....27

1. The Words "this Title" in IRC § 7701(a)(29) Refer to the Internal Revenue Title of 1954....29

2. Commission Provides No Authority Supporting Its Erroneous Assumption that the Words "this Title" In IRC § 7701(a)(29) Refer to Title 26....29

3. The IDAPA Definition Refers to IRC § 7701(a)(29) as Set Forth in the Internal Revenue Code and Not Title 26....31

4. The Commission's Interpretation of the IDAPA Definition Renders It in Conflict with the Plain Meaning of I.C. § 63-3004....32

VII. REPEALED § 1022 WAS NOT INCORPORATED INTO THE IDAHO ACT BY I.C. § 63-3004....33

A. Section 1022 Was Entirely Repealed from the Internal Revenue Code on December 17, 2012....34

B. The Commission Ignores the Plain Meaning of I.C. § 63-3004....35

C. Commission Misconstrues The Words "And In Effect" As Used In I.C. § 63-3004....37

D. Even the District Court Abandoned Its § 1022 Analysis....40

VIII. THE COMMISSION'S POLICY ARGUMENTS ARE MISPLACED AND DO NOT OUTWEIGH THE CONSIDERATIONS ADVANCED BY THE ESTATE..........42

IX. THE ESTATE IS ENTITLED TO ATTORNEY FEES ON APPEAL........................46

X. CONCLUSION..49

TABLE OF CASES AND AUTHORITIES

CASES

Ada County Assessor v. Roman Catholic Diocese of Boise, 123 Idaho 425 (1993)....................12
Ada County Bd. Of Equalization v. Highlands Inc., 141 Idaho 202 (2005)..........................32
Albertson's, Inc. v. State, 106 Idaho 810 (1984)...30
Bogner v. State Dept. of Rev. and Tax'n, 107 Idaho 854 (1984)..................................30, 33, 47
Brannon v. City of Coeur d'Alene, 153 Idaho 843 (2012)..43, 44
Gordon v. Hedrick, 159 Idaho 604...20
Hibben v. United States, 2009 WL 2633137 (E.D. Tenn. 2009)...30
Hillcrest Haven Convalescent Ctr. v. Idaho Dept. of Health and Welfare, 142 Idaho 123 (2005)...20
Houston v. Idaho State Tax Commission, 126 Idaho 718 (1995)..30
Idaho Savings and Loan Ass'n v. Roden, 82 Idaho 128 (1960)...13
Lockheed Martin Corp. v. Idaho State Tax Comm'n, 142 Idaho 790 (2006)......................15, 17, 30
Moses v. Idaho State Tax Comm'n, 118 Idaho 676 (1990)...32-33
Parker v. Idaho State Tax Comm'n, 148 Idaho 842 (2010)........................14, 15, 17, 30, 46-47
Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (1986)..................................15, 16, 17, 30
Potlatch Corp. v. United States, 134 Idaho 912 (2000).....................................12, 16, 17, 30
Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County, 136 Idaho 809 (2001)............32
Sweitzer v. Dean, 118 Idaho 568 (1990)..12
United States v. Mclain, 597 F. Supp. 2d 987 (D. Minn. 2009)..30
United States v. Tourtellot, 483 B.R. 72 (2012)...48
Verska v. St. Alphonsus Reg'l Med. Ctr..20, 21, 22
Viking Constr., Inc. v. Hayden Lake Irr. Dist., 149 Idaho 187 (2010)..................................22
Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653 (1974).......................................38
Worley Highway Dist. v. Kootenai County, 98 Idaho 925 (1978)...21

STATUTES AND RULES

1 U.S.C. § 109...38
1 U.S.C. § 204...30, 48
Cal. Rev. & Tax Code § 18036.6...43
I.A.R. 40...46, 49

Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 45
I.A.R. 41 .... 46, 49
I.C. § 14-403 46
I.C. § 63-3001 6
I.C. § 63-3002 .... 6, *passim*
I.C. § 63-3004 .... 6, *passim*
I.C. § 63-3011B .... 6, *passim*
I.C. § 63-3011C .... 6, *passim*
I.C. § 63-3022 16
I.C. § 63-3024 7
I.C. § 63-3027 15
I.C. § 63-3049 .... 46, 49
IDAPA 35.01.01.010.08 .... 25, *passim*
IRC § 44G(c)(5) 16
IRC § 61 10
IRC § 63 10
IRC § 162(*l*)(6) 23, 24, 38, 39, 40, 42, 43
IRC § 409 16
IRC § 1001 10
IRC § 1014 .... 10, 44, 49
IRC § 1022 .... 7, *passim*
IRC § 2010 43
IRC § 2011 46
IRC § 7701 .... 25, *passim*
Self-Employed Health Insurance Act, Pub. L. No. 104-7 .... 23, 38
Tax Reform Act of 1986 Pub. L. No. 99-514, 100 Stat. 2085 44
Taxpayer Relief Act of 1997 Pub. L. No. 105-34, 111 Stat. 788 44
TRUIRJCA Pub. L. No. 111-312, 124 Stat. 3296 .... 7, *passim*

OTHER AUTHORITY

1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938 .... 11, 13, 23, 38, 43, 47
Black's Law Dictionary (6th ed. 1991) 37
Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649 (2006) 34, 45
Ruth Mason, *Delegating Up: State Conformity with the Federal Tax Base*, 62 Duke L. J. 1267 (2013) 42
State of Hawaii, Department of Taxation Announcement No. 2011-21, July 19, 2011 43

I. INTRODUCTION

In addressing the issues presented by this case and the positions taken by the Commission in its Respondent's Brief (herein "Commission's Brief"), it is important to recap the undisputed mechanics of the Internal Revenue Code's[1] relationship to the Idaho Income Tax Act, I.C. §[2] 63-3001 *et seq.* (the "Idaho Act")[3] to define the components of the Idaho Act that are essential to a proper understanding of the issues before this Court. Section II. of this brief provides that introductory summary and also recaps some of the facts relevant to the issues discussed herein; Section III. of this brief addresses the Commission's argument that I.C. § 63-3002 mandates identical reporting of federal and state taxable income; Section IV. of this brief addresses the Commission's argument that I.C. §§ 63-3004 and 63-3011B require Idaho taxpayers to report the same amount of taxable income on their federal and state returns; Section V. of this brief addresses the Commission's argument that I.C. § 63-3011C provides that all disparities between federal income tax reporting and Idaho state income tax reporting must be specifically provided in the Idaho Act; Section VI. of this brief addresses the Commission's argument that the Idaho Act

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

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

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

incorporates, by way of I.C. § 63-3004, the uncodified federal election (the "Public Law Election") provided at § 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 ("TRUIRJCA"); Section VII. of this brief addresses the Commission's argument that the repealed § 1022 of the Internal Revenue Code was nonetheless in effect as part of the Internal Revenue Code for purposes of determining the Estate's 2012 taxable income under I.C. § 63-3011B; Section VIII. of this brief addresses the Commission's argument that permitting the Estate to report different sums of taxable income on its federal and state returns would somehow jeopardize the administration of Idaho's state income tax regime; and, finally, Section IX. of this brief addresses the Commission's argument that the Estate is not entitled to attorney fees on appeal.

II. RECAP OF LEGAL FRAMEWORK AND RELEVANT FACTS.

The components of the Idaho Act that are essential to the understanding both the mechanics of the Idaho Act and the specific issues before this Court revolve around I.C. § 63-3011C's definition of "Idaho taxable income." First, I.C. § 63-3024 imposes a tax on the Estate's "Idaho taxable income." Next, I.C. § 63-3011C defines "Idaho taxable income" as "***taxable income*** as modified pursuant to the Idaho adjustments specifically provided in [the Idaho Act]." (Emphasis added) (hereinafter referred to as "Idaho Taxable Income"). Finally, I.C. § 63-3011B defines "taxable income" as "federal taxable income ***as determined under the Internal Revenue Code***." (Emphasis added) (hereinafter referred to as "Taxable Income"). Thus, Taxable Income is the starting point for calculating Idaho Taxable Income. The proper calculation of the Estate's Taxable

Income in 2012 is the crux of this case.

As summarized on pages 8-10 of its Opening Brief on Appeal (the "Estate's Opening Brief"), this case concerns the determination of the Estate's adjusted basis in real estate located in Chino, California (the "Ranch") that was highly appreciated at the time of the owner's death. The Estate appeals the District Court's Memorandum Decision and Order on Cross-Motions for Summary Judgment (the "Memorandum Decision") and the District Court's Memorandum Decision And Order Denying Plaintiff's Motion For Reconsideration And Amendment of Judgement ("Reconsidered Decision"), which required the Estate to take a carryover basis in the Ranch equal to the owner's income tax basis in the property rather than a stepped-up basis equal to its fair market value on the owner's date of death. The District Court based its decision on the Estate's use of the federal uncodified Public Law Election, which enabled the Estate to pay no federal estate tax by electing to take a carryover basis for federal income tax purposes in accordance with the with the carryover basis rules previously contained in IRC § 1022 ("Repealed § 1022"). For reasons discussed below and in the Estate's Opening Brief, the District Court erred in applying the Public Law Election and Repealed § 1022 despite neither provision being a part of the Internal Revenue Code and the Idaho Act during 2012 – the year in which the Estate sold the Ranch.

III. IDAHO CODE § 63-3002 DOES NOT IMPOSE A MANDATE REQUIRING TAXPAYERS TO REPORT IDENTICAL AMOUNTS OF TAXABLE INCOME TO THE STATE OF IDAHO AND THE IRS.

At pages 9 – 11 of the Commission's Brief, the Commission takes the position that I.C. § 63-3002 establishes a mandate requiring that "the starting Idaho taxable income amount must be the same

as the federal taxable income that the Estate reported on its federal tax return." (Commission's Brief, p. 9.) In other words, the Commission construes I.C. § 63-3002 to define Taxable Income to be equal to the sum of federal taxable income the taxpayer reports to the IRS. As discussed in this Section III., the Commission's interpretation of the intent statute is meritless because (A) the plain language of I.C. § 63-3002 contains no requirement to report identical sums on federal and state income tax returns, (B) construing I.C. § 63-3002 in such a manner would render other portions of the Idaho Act superfluous, (C) requiring absolute conformity between federal and state income tax returns would amount to an unconstitutional delegation of the Legislature's authority, and (D) case law does not support the Commission's interpretation.

A. The Plain Language of I.C. § 63-3002 Does Not Mandate that Taxable Income Always Be Equal to the Amount Reported on a Taxpayer's Federal Income Tax Return.

Idaho Code § 63-3002, which was last amended in 1995, is obviously a statement of the Legislature's intent regarding the taxation scheme set forth in the Idaho Act and a general summary of the mechanics of the Idaho Act. The full text of I.C. § 63-3002 is as follows:

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

> wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

(Emphasis added). Simply stated, I.C. § 63-3002 provides that "***insofar as possible***" the Legislature's goal is that the sum of the taxpayer's federal taxable income determined pursuant to the Internal Revenue Code and reported to the IRS be utilized as the starting point for calculating Idaho Taxable Income. Although I.C. § 63-3002 clearly states that as a goal (i.e., "***to the end that***"), its plain language in no way purports to define Taxable Income as the sum that is reported to the IRS. Rather, I.C. § 63-3002 emphasizes that "***an amount called 'taxable income' in the Internal Revenue Code***" is to be calculated through the "***application of the various provisions of the Federal Internal Revenue Code relating to the definition of . . . basis***."[4] Moreover, the use of the words "***insofar as possible***," recognizes that the sum of federal taxable income calculated pursuant to the Internal Revenue Code may not in all cases be identical to the sum of federal taxable income a taxpayer reports to the IRS. Indeed, it is **impossible** for those sums to be identical in rare cases such as in this case where federal taxable income reported to the IRS is not calculated exclusively pursuant to the Internal Revenue Code.[5] Therefore, the plain language of I.C. § 63-3002 clearly does not define a taxpayer's

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[4] Briefly, under the Internal Revenue Code, taxable income is determined by calculating "gross income" minus allowable deductions. IRC § 63(a). Gross income is defined to include "[g]ains derived from dealings in property." IRC § 61(a)(3). For property sales, gain is calculated by subtracting the "adjusted basis" from the sale proceeds. IRC § 1001(a). IRC § 1014 creates a special step-up of an estate's basis in property acquired from a decedent to the property's fair market value as of the decedent's date of death.

[5] For another example of disparities between the reporting of taxable income at the federal and

Taxable Income simply as the sum that, in the Commission's words, is identical "to the federal taxable income that the taxpayer reported on its federal tax return" (Commissions' Brief, p. 9.)

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

As noted, the Commission construes I.C. § 63-3002 as mandating that the starting point for calculating Idaho Taxable Income is the federal taxable income reported to the IRS on a taxpayer's federal income tax return. (Commission's Brief, pp. 9-11.) The Commission's construction, however, is wholly inconsistent with the clearly crafted structure of the Idaho Act.

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

If the Commission's formulation of the intent statute – i.e., a mandate requiring taxpayers to report identical amounts of Taxable Income to the Commission and the IRS regardless of the sum of federal taxable income calculated pursuant to the Internal Revenue Code – is accurate, then there

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state levels, despite the absence of adjustments to federal law specifically provided in the Idaho Act, *see* 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938 further analyzed at Section VII.C. *supra*.

would be no need in the Idaho Act for I.C. § 63-3011B to define Taxable Income based on I.C. § 63-3004's definition of "Internal Revenue Code." Taxpayers would simply parrot on their Idaho returns the amount of taxable income reported to the IRS as their Taxable Income and then make adjustments to that amount to determine Idaho Taxable Income. This is a much different process than the Idaho Act's express statutory scheme that first requires the determination of Taxable Income under the Internal Revenue Code pursuant to I.C. §§ 63-3011B and 63-3004, and then requires the application of other applicable adjustments, before arriving at Idaho Taxable Income as defined in I.C. § 63-3011C.

Under the Commission's construction of I.C. § 63-3002, I.C. § 63-3011B's function of defining Taxable Income based on I.C. § 63-3004's definition of the "Internal Revenue Code" is erased from the Idaho Act. Therefore, the Commission's interpretation of I.C. § 63-3002 presupposes that I.C. § 63-3011B was enacted frivolously, thus violating the rule of statutory construction presuming that the Legislature does not enact statutes for no reason. *See Potlatch Corp. v. United States*, 134 Idaho 912, 915 (2000) ("A fundamental principle of statutory construction is that a provision should not be construed to make surplusage of provisions included within the act.") (citing *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425 (1993)); *see also Potlatch Corp.*, 134 Idaho at 915 ("Standard rules of statutory interpretation require this Court to give effect to the legislature's intent and purpose, and to every word and phrase employed."); *Sweitzer v. Dean*, 118 Idaho 568, 572 (1990) ("It is incumbent upon this Court to interpret a statute in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a

superfluous statute."). As discussed in the next Section III.C., the Legislature's purpose for enacting IC. § 63-3011B and annually amending I.C. § 63-3004's definition of the "Internal Revenue Code" is far from frivolous.

C. Idaho Code §§ 63-3011B and 63-3004 Underpin the Constitutionality of the Idaho Act.

Again, the Commission contends that I.C. § 63-3002 requires taxpayers to utilize the sum of federal taxable income reported to the IRS on their federal return as their Taxable Income regardless of whether or not their federal taxable income was calculated pursuant to the Internal Revenue Code as defined in I.C. § 63-3004. However, if I.C. § 63-3002 was interpreted in that manner, the Idaho Act would provide a delegation of Legislative power that is not permitted by the Idaho Constitution. Far from being frivolous or meaningless statutes, therefore, I.C. § 63-3011B and I.C. § 63-3004's associated definition of the Internal Revenue Code serve the indispensable purpose of underpinning the constitutionality of the Idaho Act.

As noted in a 1995 Opinion addressed to the Commission the Idaho Attorney General, "the reason for annually updating Idaho Code § 63-3004 is to avoid any possibility of an apparent adoption of federal law changes that significantly affect state tax policy without legislative approval." 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938, at *2. As also noted in that opinion, this Court "has in the past struck down statutes that provide for similar legislative delegations to Congress." *Id.* (citing *Idaho Savings and Loan Ass'n v. Roden*, 82 Idaho 128 (1960)). The Attorney General Opinion then goes on to state that "the Idaho Legislature may adopt existing provisions of the Internal Revenue Code as part of the Idaho Income Tax Act, but it cannot adopt, as

Idaho law, unknown and unknowable future federal provisions." *Id.* at *3. Accordingly, I.C. § 63-3002 cannot define Taxable Income in 2012 to be equal to the amount of taxable income reported to the IRS on a 2012 federal income tax return because that amount would be calculated pursuant to federal provisions that were clearly "unknown and unknowable" when I.C. § 63-3002 was last amended by the Legislature on March 14, 1995. Stated differently, it is not constitutionally permissible for the Legislature to delegate tax policymaking authority to Congress let alone the IRS personnel who draft the federal income tax returns. Instead, as indicated by its plain language, I.C. § 63-3002 does not attempt to define the concept of Taxable Income. The Idaho Act leaves that indispensable function to I.C. §§ 63-3011B and 63-3004. If it did not, the Idaho Act would be unconstitutional.

D. Idaho Case Law Does Not Support the Proposition that "Taxable Income" Always Be Equal to the Amount Reported on a Taxpayer's Federal Income Tax Return.

The Commission states that "[t]his Court has repeatedly given effect to the legislature's clearly expressed intent in [I.C. § 63-3002] 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." (Commission's Brief, p. 10.) In support of that statement, the Commission cites four cases. Not one of those cases, however, provide support for the Commission's statement. Rather, each of those cases make clear that Taxable Income is calculated pursuant to the Internal Revenue Code.

First, the Commission cites *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842 (2010). (Commission's Brief Page 10.) In that opinion, this Court states, "Idaho's taxation scheme mirrors

that of federal law. 'It is the intent of the [Idaho] legislature ... insofar as possible to make the provisions of the [Idaho Income Tax Act] identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income' I.C. § 63-3002." *Id* at 846 (alterations in original). This Court's statement indicates that the Legislature's intent is that Taxable Income be determined pursuant to the Internal Revenue Code. The *Parker* opinion makes no statement indicating that the taxpayer's Taxable Income is determined by reference to the amount reported to the IRS rather than the amount determined pursuant to the Internal Revenue Code.

Second, the Commission cites *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790 (2006). (Commission's Brief, p. 10.) In *Lockheed,* the Commission argued that I.C. § 63-3002 mandated that IRC § 460 be applied to determine the taxpayer's Idaho tax liability. *Lockheed*, 142 Idaho at 796. This Court held, however, that the income the Commission attempted to tax under IRC § 460 was not subject to state income taxation under the Idaho Act due to the multistate tax rules of I.C. § 63-3027. *Id.* at 796-97. Because I.C. § 63-3027 made the application of IRC § 460 irrelevant to the tax analysis in *Lockheed*, this Court stated that I.C. § 63-3002 "does not incorporate by reference all provisions of the federal Internal Revenue Code into Idaho tax law." *Id* at 796. Again, there is nothing in the *Lockheed* opinion supporting the proposition that I.C. § 63-3002 mandates Taxable Income to be equal to the amount reported on a taxpayer's federal income tax return.

Third, the Commission cites *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572 (1986). In that opinion this Court states that "[o]ur legislature intended the provisions of the Idaho Income

Tax Act to be identical ***to the Internal Revenue Code***, in so far as possible. I.C. § 63-3002." *Id* at 575 (emphasis added). Again, this Court's statement in *Parsons* indicates that the Legislature's intent is that Taxable Income be calculated pursuant to the Internal Revenue Code rather than blindly duplicating the taxpayer's federal income tax return.

Fourth, the Commission cites *Potlatch Corporation v. Idaho State Tax Comm'n*, 128 Idaho 387 (1996). In *Potlatch,* IRC § 409 gave the taxpayer the choice of claiming either an income tax deduction or income tax credit for contributions made to an employee stock ownership program ("ESOP"). *Id.* at 387-88. The taxpayer claimed the credit not the deduction. *Id.* at 388. Therefore, IRC § 44G(c)(5), which was then set forth in Chapter 1 of the Internal Revenue Code, prevented the taxpayer from claiming a deduction for the amount claimed as a credit. *Id.* at 389. This Court, therefore, concluded that the taxpayer was not allowed to take an income tax deduction for the ESOP contribution on its Idaho income tax return because "federal taxable income is determined by deducting from gross income only those deductions 'allowed' by chapter 1 of the Internal Revenue Code." *Id* at 389. In reaching that conclusion, this Court quoted a prior version of I.C. § 63-3022 (1995) for the proposition that "[t]he legislature has defined taxable income for state tax purposes as follows: 'The term 'taxable income' means 'taxable income' as *defined* in section 63 of the Internal Revenue Code, *adjusted* as follows:" *Id* at 389 (emphasis in original). Importantly, the 1995 version of I.C. § 63-3022 was the statute that then-defined the term Taxable Income and was the precursor to the 2012 version of I.C. § 63-3011B. Accordingly, in *Potlatch*, this Court relied on I.C. § 63-3022 (1995) to define the concept of Taxable Income. Critically, therefore, this Court did not rule that I.C.

§ 63-3002 defined Taxable Income under the Idaho Act. Yet again, this Court's opinion in *Potlatch* references the Legislature's intent that Taxable Income be calculated pursuant to the Internal Revenue Code. Moreover, *Potlatch* clearly does not stand for the proposition that Taxable Income "is to be 'identical to the amount reported to the Internal Revenue Service" as argued by the Commission at pages 9-10 of the Commission's Brief.

Finally, it must be noted that *Parker*, *Lockheed*, *Parsons* and *Potlatch* all involved taxpayers whose federal taxable income was calculated exclusively pursuant to the Internal Revenue Code. In those cases, therefore, the taxpayer's federal taxable income as calculated pursuant to the Internal Revenue Code was identical to the amount of federal taxable income reported to the IRS on the taxpayer's federal income tax return. Accordingly, in *Parker*, *Lockheed*, *Parsons* and *Potlatch* this Court did not even address the application of I.C. §§ 63-3002 and 63-3011B to the situation now before this Court where a taxpayer's federal taxable income was not calculated exclusively pursuant to the Internal Revenue Code (i.e., calculated in part pursuant to the Internal Revenue Code and in part pursuant to federal tax law that was not part of the Internal Revenue Code).[6] Therefore, it is misleading for the Commission to cite out-of-context *dicta* in

[6] As the Commission notes on Pages 13-14 of the Commission's Brief, the District Court in its Memorandum Decision and Order on Cross-Motions for Summary Judgment emphasized in a footnote that Idaho's income tax forms "are designed to account for the adjustments to federal taxable income for which Idaho law provides" and cited the "SAMPLE" federal return attached to the Estate's amended Idaho income tax return as additional support for its holding that no basis step-up was permissible. (R. at 000260-61, n. 10). However, a review of the Schedule B of the Idaho income tax return form shows options for "Other additions" and "Other subtractions." While the estate utilized the "SAMPLE" federal return in order to clearly illustrate its calculations, it could just as easily have written in the basis step-up difference as an "Other subtraction" just as a

those cases as support for anything other than the proposition that Taxable Income under the Idaho Act is determined pursuant to the Internal Revenue Code.

IV. PLAIN LANGUAGE OF THE IDAHO ACT (PARTICULARLY I.C. §§ 63-3004 AND 63-3011B) DO NOT REQUIRE THE ESTATE TO REPORT THE SAME AMOUNT OF TAXABLE INCOME TO THE IRS AND IDAHO.

The Commission takes the position that "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." (Commission's Brief, pp. 8, 14-16.) As discussed below, that position is meritless because (A) the plain language of I.C. §§ 63-3004 and 63-3011B requires taxable income to be determined pursuant to the Internal Revenue Code rather than the amount reported on the taxpayer's federal income tax return and (B) canons of statutory interpretation require these statutes to be interpreted according to their plain meaning.

A. There Is No Way to Read the Literal Words of I.C. §§ 63-3004 and 63-3011B as Defining Taxable Income to Be the Amount Reported on the Taxpayer's Federal Income Tax Return Rather than the Amount of Federal Taxable Income Calculated Pursuant to the Internal Revenue Code.

As noted, I.C. § 63-3011B states: "[t]he term 'taxable income' means federal taxable income as determined under the Internal Revenue Code." As also noted, § 63-3004 simply defines the term "Internal Revenue Code." The full text of the 2012 version of § 63-3004 is as follows:

1994 Idaho filer who claimed the federal health care deductions discussed in the above-cited 1995 Attorney General Opinion would almost certainly have to account for their inapplicability under Idaho law as an "Other addition." Thus, Idaho's tax forms do not even remotely set forth an exhaustive list of Idaho's modifications of the federal tax reporting rules.

> **63-3004. Internal Revenue Code.** – (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January, 2012.
>
> (b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendment, deletions, or additions, including retroactive provisions.

The Commission claims that "in light of I.C. § 63-3002" I.C. § 63-3004 unambiguously requires the Estate report the same amount of taxable income on its state and federal income tax returns. (Commission's Brief, pp. 8, 14-16.) Although the Estate has attempted to consider the Commission's construction of I.C. § 63-3004 with an open mind, the Estate is unable to interpret the literal language of the 2012 version of I.C. § 63-3004, along with I.C. § 63-3011B's direction that Taxable Income means federal taxable income as determined under the Internal Revenue Code, as anything other than a direction that Taxable Income is to be calculated pursuant to the Internal Revenue Code as it existed on January 1, 2012.

The Commission provides no explanation of how straight forward definitions of Taxable Income and the Internal Revenue Code can be interpreted as an unambiguous requirement that the Estate report the same amount of taxable income to Idaho as it is reported to the United States on forms prepared by the IRS. The words of I.C. §§ 63-3004 and 63-3011B make no reference to tax filings with the IRS. The words of I.C. §§ 63-3004 and 63-3011B make no reference to tax filings with Idaho. The words of I.C. §§ 63-3004 and 63-3011B do not, by any stretch of the imagination, purport to require that the identical sum of taxable income reported to the IRS be reported to Idaho.

Accordingly, this Court should conclude that the Commission's construction of I.C. § 63-3004 is frivolous and groundless.

B. **The Commission Asks this Court To Ignore the Literal Words of §§ 63-3004 and 63-3011B.**

As noted, the literal words of I.C. §§ 63-3004 and 63-3011B express no more or no less than an unambiguous definition of Taxable Income and an unambiguous definition of the Internal Revenue Code. Idaho law governing statutory interpretation is clear: those words may not be construed to say anything other than what they say. This Court has recently stated that "[b]ecause the best guide to legislative intent is the words of the statute itself, the interpretation of a statute must begin with the literal words of the statute." *Gordon v. Hedrick*, 159 Idaho 604, 364 P.3d 951, 956 (2015). Furthermore, as stated by this Court in *Hillcrest Haven Convalescent Ctr. v. Idaho Dept. of Health and Welfare*, 142 Idaho 123, 125 (2005), "[i]f a statute is clear on its face, it is unnecessary to engage the tools of statutory construction." In other words, "[i]f the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011). Because the words of these statutes so obviously do not establish a requirement that taxpayers report the same amount of taxable income to both the IRS and Idaho, it is clear that the Commission is inviting this Court to ignore the literal words of both I.C. §§ 63-3004 and 63-3011B. This Court should not accept the Commission's invitation because the unambiguous language of I.C. §§ 63-3004 and 63-3011B provide absolutely no support for the Commission's proposed construction of those statutes.

It is also clear the Commission asks this Court to construe I.C. §§ 63-3004 and 63-3011B to say something that they do not literally say. The Commission apparently considers this appropriate "in light of" what it believes to be the Legislature's intended I.C. § 63-3002 mandate (i.e, Taxable Income must always equal the amount of income reported to the IRS on its tax forms). As discussed above at Section III.A. of this brief, however, I.C. § 63-3002 is not properly interpreted as mandating Taxable Income to always be identical to the amount of income reported to the IRS. Furthermore, even if the Commission's purported I.C. § 63-3002 mandate existed, this Court does not have the authority to ignore the he literal words of I.C. §§ 63-3004 and 63-3011B. As this Court has recently stated, "[t]he wisdom, justice, policy, or expediency of a statute are questions for the legislature alone." *Verska*, 151 Idaho at 895. This Court also stated in the *Verska* opinion that "[t]his Court has consistently adhered to the primary canon of statutory construction that where the language of the statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction." *Id.* (quoting *Worley Highway Dist. v. Kootenai County*, 98 Idaho 925, 928 (1978)). This Court then went on to make the following statement:

> If this Court were to conclude that an unambiguous statute was palpably absurd, how could we construe it to mean something that it did not say? Doing so would simply constitute revising the statue, but we do not have the authority to do that. The legislative power is vested in the senate and house of representatives, Idaho Const. art. III, § 1, not in this Court.

Verska, 151 Idaho at 895. Accordingly, it clear that this Court does not have the authority to construe the unambiguous words of I.C. §§ 63-3004 and 63-3011B to mean anything other than what

they are: an unambiguous definition of Taxable Income and an unambiguous definition of the Internal Revenue Code.

Finally, even if it is assumed *arguendo* that the Commission's interpretation of the purported I.C. § 63-3002 mandate was accurate, then a direct conflict exists between I.C. § 63-3002 on the one hand and the literal words of I.C. §§ 63-3004 and 63-3011B on the other hand (i.e., I.C. § 63-3002 requiring Taxable Income to be defined as the amount of income reported to the IRS while I.C. §§ 63-3004 and 63-3011B define Taxable Income to be the amount determined pursuant to the Internal Revenue Code). Even in that event, the literal words of I.C. §§ 63-3004 and 63-3011B must be given effect because, as a declaration of intent, I.C. § 63-3002 cannot modify the clear and unambiguous language of I.C. §§ 63-3004 and 63-3011B. *See Viking Constr., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 191 (2010) ("The asserted purpose for enacting legislation ***cannot modify its plain meaning***.") (emphasis added) (*abrogated on other grounds by Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011)).

V. I.C. § 63-3011C DOES NOT REQUIRE ALL DEVIATIONS BETWEEN FEDERAL INCOME TAX AND IDAHO STATE INCOME TAX REPORTING TO BE "SPECIFICALLY PROVIDED" IN THE IDAHO ACT.

In the Commission's Brief, the Commission also misconstrues I.C. § 63-3011C as requiring identical reporting of taxable income on federal and state income tax returns. (Commission's Brief p. 11.) As the Estate made clear in its Memorandum in Support of Motion for Reconsideration and Amendment of Judgment, this misapplication of I.C. § 63-3011C, which defines "Idaho taxable income" as "***taxable income*** as modified pursuant to the Idaho adjustments specifically provided in

this chapter," improperly bypasses I.C. § 63-3011B, which defines "taxable income" as "federal taxable income ***as determined under the Internal Revenue Code***." *See* (R. at 000265) (emphasis added). Therefore, before calculating Idaho Taxable Income under I.C. § 63-3011C, it is necessary to arrive at "taxable income" under I.C. § 63-3011B, which does not require that Idaho adjustments be "specifically provided." Instead, I.C. § 63-3011B merely references "the Internal Revenue Code," which I.C. § 63-3004 defines as the "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2012." Since, as previously explained, neither the Public Law Election nor IRC § 1022 were part of the Internal Revenue Code on January 1, 2012, they do not factor into the calculation of Taxable Income pursuant to I.C. § 63-3011B and as a result, cannot affect the calculation of Idaho Taxable Income under I.C. § 63-3011C.

The above-referenced Idaho Attorney General Opinion that is addressed to the Commission also contradicts the Commission's overbroad reading of I.C. § 63-3011C. As previously cited in the Estate's Opening Brief and other prior filings with the District Court, that Attorney General Opinion informed the Commission that a provision of the 1995 Self-Employed Health Insurance Act ("SEHIA"), Pub. L. No. 104-7 that retroactively provided a deduction for certain health insurance costs under IRC § 162(*l*)(6), was not incorporated into the Idaho Act by I.C. § 63-3004. 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938. The Attorney General explained that the IRC § 162(*l*)(6) deduction was nevertheless not retroactive for purposes of the Idaho Act because SEHIA was not signed into law for more than four months after Idaho's then-latest amendment to I.C. 63-3004 became effective on January 1, 1995. *Id.* Because the IRC § 162(*l*)(6)

deduction was not part of the "Internal Revenue Code" that was incorporated into the Idaho Act for the 1995 tax year, disparate deductions were required to be reported at the federal level and state level – even though nothing in the Idaho Act expressly forbade the IRC § 162(*l*)(6) deduction.[7] Therefore, it is not necessary to consider whether the Idaho Act "specifically provide[s]" for the inapplicability of Repealed § 1022 and the Public Law Election for determining Idaho Taxable Income because those off-code provisions are not even applicable for the calculation of Taxable Income under the Idaho Act.

VI. THE PUBLIC LAW ELECTION IS NOT INCORPORATED INTO THE IDAHO ACT BY I.C. § 63-3004.

In the event this Court declines to accept the Commission's invitation to construe the language of I.C. §§ 63-3004 and 63-3011B as imposing a "requirement that the Estate report the same amount of taxable income to Idaho that it reported to the IRS," one of the Commission's two fallback arguments is that the Public Law Election is incorporated into the Idaho Act by I.C. § 63-3004's reference to the "Internal Revenue Code of 1986." This is a shocking argument given that the Commission (A) agrees, as explained in the next Section VI.A., that the Public Law Election is not part of the Internal Revenue Code and (B) does not dispute, as explained in Section VI.B., the Estate's position that the plain, usual and ordinary meaning of the phrase "Internal Revenue Code of 1986"

[7] The 1995 Attorney General Opinion relied on a precursor to I.C. §§ 3011B and 3011C, which defined "taxable income" as "'taxable income' as defined in section 63 of the Internal Revenue Code, adjusted as provided in this chapter." Nonetheless, like the case at hand, the Attorney General's opinion was based solely on the contents of the Internal Revenue Code as of a specified snapshot date irrespective of the federal income tax amounts reported by taxpayers and without relying on any specific modifications in the Idaho Act to the federal income tax regime.

as defined in IRC § 7701(a)(29) is a reference only to that federal law comprising the statutory text of the Internal Revenue Code (i.e., Internal Revenue Title of 1954 and amendments thereto). Ignoring these obvious inconsistencies in their analysis, the Commission takes the extraordinary position that IDAPA 35.01.01.010.08 (the "IDAPA definition") has the effect of converting I.C. § 63-3004's reference to the "Internal Revenue Code of 1986" into a reference to "Title 26 of the United States Code." The clear problems associated with the Commission's construction of I.C. § 63-3004's and the IDAPA definition are discussed in Section VI.C.

A. <u>The Commission Agrees That The Public Law Election Is Not Part Of The Internal Revenue Code.</u>

As indicated at page 31 of the Estate's Opening Brief, the Record shows there is no disagreement regarding the conclusion that the Public Law Election is <u>not</u> part of the Internal Revenue Code's statutory text. The Estate's Opening Brief notes that the Commission conceded multiple times that "the verbiage of the election in question was not incorporated within the four corners of the Internal Revenue Code." (R. at 000098.)[8] Likewise, the Reconsidered Decision states that the "TRUIRJCA § 301(c) [Public Law Election] isn't part of the individual statute enacted by Congress and called the 'Internal Revenue Code of 1986'". (R. at 000343, n. 2.) In connection with that

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

acknowledgement, the District Court cited a statement of the Law Revision Counsel of the U.S. House of Representatives, Ralph V. Seep, previously stricken from the record, that "TRUIRJCA § 301(c) [i.e., Public Law Election] isn't part of the Internal Revenue Code of 1986." *Id.* Importantly, in the Commission's Brief, the Commission does not object to any of the foregoing positions set forth in this paragraph each of which was set forth in the Estate's Opening Brief at pages 31-32. Moreover, at page 18 of the Commission's Brief, the Commission states that "[a]gain, the District Court was correct in stating that even though 'the Estate made the Section 1022 Election [Public Law 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.'" (First emphasis added). It is apparent, therefore, that the Commission has conceded that the Public Law Election is not part of the Internal Revenue Code.

B. The Phrase "Internal Revenue Code of 1986" Includes Only the Statutes that Comprise the Internal Revenue Code.

As explained at pages 36-38 of the Estate's Opening Brief, the group of federal statutes that comprise the "Internal Revenue Code of 1986" as referenced in I.C. § 63-3004 and defined in IRC § 7701(a)(29) include only those statutes originally set forth as the Internal Revenue Title of 1954 as the text of such statutes are subsequently amended by Congress. Critically, in the Commission's Brief, the Commission does not even bother to dispute the Estate's analysis of IRC § 7701(a)(29)'s definition of the "Internal Revenue Code of 1986" even though the Estate devoted a lengthy portion of its brief explaining the meaning of that definition. *See* (Estate's Opening Brief, pp. 35-43.) Furthermore, the Estate has been unable to find any authority at the state or federal level that is not consistent with the

Estate's analysis of this point. Accordingly, it can only be assumed that the Commission did not dispute the Estate's analysis of the definition of the "Internal Revenue Code of 1986" set forth in IRC § 7701(a)(29) due to the unavailability of any contrary authority. Moreover, the Commission's acknowledgements that the Public Law Election is not part of the Internal Revenue Code can only mean that the Commission must also agree that, conversely, the definition of the Internal Revenue Code set forth at IRC § 7701(a)(29) only includes those statutes originally enacted by Congress as part of the Internal Revenue Title of 1954 as the text of such statutes are subsequently amended by Congress. Otherwise, there would be no basis for the Commission's conclusion that the Public Law Election is not part of the Internal Revenue Code. Given the foregoing, this Court should conclude that the phrase "Internal Revenue Code of 1986" as referenced in I.C. § 63-3004 and defined in IRC § 7701(a)(29) includes only those statutes originally set forth as the Internal Revenue Title of 1954 as the text of such statutes are subsequently amended by Congress.

C. The IDAPA Definition Does Not Convert I.C. § 63-3004's Reference to "Internal Revenue Code of 1986" into a Reference to "Title 26 of the United States Code".

As noted, the Commission agrees that the Public Law Election is not part of the Internal Revenue Code of 1986. As also noted, the Commission does not dispute the Estate's interpretation that IRC § 7701(a)(29) defines the "Internal Revenue Code of 1986" as being comprised as only those statutes originally set forth as the Internal Revenue Title of 1954 as the text of such statutes are subsequently amended by Congress. Due to the undisputed correctness of those two points, the Commission is left with no option but to endorse the District Court's erroneous conclusion that the IDAPA definition, which provides that terms not defined in the Idaho Act are given the meanings

ascribed to them in the Internal Revenue Code, causes I.C. § 63-3004's reference to the "Internal Revenue Code of 1986" to morph into a reference to "Title 26 of the United States Code."

At page 22 of its Reply Brief, the Commission parrots the following analysis from the District Court:

> [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."

(Emphasis in original). In other words, the Commission argues that the IDAPA definition changes the text of I.C. § 63-3004 as follows:

> **63-3004. Internal Revenue Code**. – (a) The term "Internal Revenue Code" means ~~the Internal Revenue Code of 1986 of the United States~~ <u>Title 26 of the United States Code</u>, as amended and in effect on the first day of January 2012.

The Commission then goes on to argue that statutory notes appended to Title 26 by the Office of the Law Revision Counsel of the U.S. House of Representatives (the "OLRC") are part of Title 26. According to the Commission, therefore, I.C. § 63-3004 incorporates into the Idaho Act those statutory notes (which, the Commission argues, include the Public Law Election) as part of I.C. § 63-3004's supposed wholesale incorporation of Title 26 of the United States Code into the Idaho Act even though by the Commission's own admission the Public Law Election is not part of the Internal Revenue Code of 1986. As was discussed in detail at pages 35-39 of the Estate's Opening Brief, there is no reasonable basis for construing the IDAPA definition in that manner. That discussion is briefly summarized in Sections VI.C.1 - VI.C.2 below.

1. The Words "this Title" in IRC § 7701(a)(29) Refer to the Internal Revenue Title of 1954.

As explained in pages 35-38 of the Estate's Opening Brief, the words "this title" in IRC § 7701(a)(29) refers to the "Internal Revenue Title of 1954" not "Title 26 of the United States Code." As noted, the Commission does not object or cite to any authority indicating that IRC § 7701(a)(29)'s reference to the "this title" refers to anything other than the "Internal Revenue Title of 1954." More importantly, neither the Commission nor the District Court cite any authority supporting the proposition that IRC § 7701(a)(29)'s reference to the words " this title" is a reference to "Title 26 of the United States Code." In the face uncontroverted analysis set forth in pages 35-38 of the Estate's Opening Brief clearly demonstrating that the words "this title" in IRC § 7701(a)(29) refer to the "Internal Revenue Title of 1954," there is no reasonable basis for this Court to conclude that the IDAPA definition causes I.C. § 63-3004's unambiguous reference to the "Internal Revenue Code of 1986" to morph into a reference to "Title 26 of the United States Code."

2. Commission Provides No Authority Supporting Its Erroneous Assumption that the Words "this Title" In IRC § 7701(a)(29) Refer to Title 26.

The Commission's interpretation of the IDAPA definition appears to be based on nothing more than a single unsupported and obviously erroneous assumption. Because Title 26 of the United States Code is one of the formats in which the Internal Revenue Code and § 7701(a)(29) are published, the Commission and the District Court simply assume that IRC § 7701(a)(29)'s reference to the words "this title" is a reference to "Title 26 of the United States Code." The Commission makes this argument when it quotes the District Court as follows: "Section 7701 defines 'Internal Revenue Code

of 1986' as 'this title,' meaning Title 26 of the United States Code."[9] (Commission's Brief, p. 22.) Other than that unsupported and unexplained assumption, no rationale or legal authority is cited by either the District Court or the Commission as to why IRC §7701(a)(29)'s reference to the words "this title" refer to "Title 26 of the United States Code" rather than the Internal Revenue Title of 1954.

One of the fundamental problems with ascribing a definition to the words "this title" based solely on the source in which the words "this title" are published is that that IRC § 7701(a)(29) is published in both the United States Statutes At Large as well as Title 26 of the United States Code.

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[9] Such an interpretation makes sense if the provisions of Title 26 of the United States Code is properly interpreted as being identical to the Internal Revenue Code of 1986 (i.e, Title 26 does not include statutory notes). The equivalency of the Title 26 and the Internal Revenue Code of 1986 is well settled. For example, 1 U.S.C. § 204 provides that "[t]he sections of Title 26, United States Code, ***are identical*** to the sections of the Internal Revenue Code." Likewise, the Federal Courts recognize that the Internal Revenue Code and Title 26 are identical. *Hibben v. United States*, 2009 WL 2633137, at *3 (E.D. Tenn. 2009), remarked that "the [Plaintiffs] can show no inconsistency between Title 26 of the United States Code and the identical underlying Statute at Large, the Internal Revenue Code of 1986, as amended." Moreover, *United States v. McLain* 597 F. Supp. 2d 987, 994 n. 6 (D. Minn. 2009) held that "while [Defendant] is technically correct in arguing that Title 26 is merely prima facie evidence of the law, the distinction is largely academic because the relevant sections of Title 26 are identical to the relevant sections of the Internal Revenue Code." This interpretation is confirmed by Idaho Courts which treat the sections of the Internal Revenue Code and Title 26 identically and interchangeably. *Compare, e.g., Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 796 (2006) (citing 26 U.S.C. § 460 alongside "Section 460 of the federal Internal Revenue Code"); *Albertson's, Inc. v. State*, 106 Idaho 810, 817 (1984) (citing "Internal Revenue Code, 26 U.S.C. § 701); *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 575 (Ct. App. 1986) (citing 26 U.S.C. § 61); *Houston v. Idaho state Tax Comm'n*, 126 Idaho 718, 720 (1995) (citing to IRC § 280A); *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 849 (2010) (citing 26 U.S.C. § 66(c)) *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 389 (1996) (citing IRC § 63(a)); *Bogner v. State Dept. of Rev. and Tax'n*, 107 Idaho 854, 859 (1984) (Donaldson, C.J., concurring) (citing IRC § 164). However, given the District Court's opinion that Title 26 contains provisions of law that are not contained within the Internal Revenue Code (e.g., the Public Law Election), it is not appropriate to treat the Title 26 and the Internal Revenue Code as equivalent bodies of law.

As explained in pages 40-41 of the Estate's Opening Brief, the Commission's interpretation results in the words "this title" having different meanings depending on the volume in which it is published. As also mentioned in pages 40-41 of the Estate's Opening Brief, the Estate has not found any authority supporting the proposition that the definition of IRC § 7701(a)(29) varies depending on whether it appears in the Statutes At Large or appears in Title 26 of the United States Code. Likewise, the Commission cites no such authority in the Commission's Brief and, therefore, has failed to address the Estate's analysis and conclusions on this point.

3. The IDAPA Definition Refers to IRC § 7701(a)(29) as Set Forth in the Internal Revenue Code and Not Title 26.

Even if the Commission is correct that the meaning of the words "this title" is supplied by reference to the volume in which § 7701(a) appears, it is clear the IDAPA definition does not direct the reader to read § 7701 from "Title 26 of the United States Code." Instead, the IDAPA definition clearly states that undefined terms shall "have the same meanings as [are] assigned to them by the ***Internal Revenue Code*** including Section 7701." (Emphasis added). As clearly explained above and in pages 35-38 of the Estate's Opening Brief, the meaning of the words "this title" as they appear in § 7701 of the Internal Revenue Code unambiguously refer only to those statutes originally set forth as the Internal Revenue Title of 1954 as the text of such statutes are subsequently amended by Congress (which the Commission acknowledges do not include the Public Law Election). Once again, the Commission does not contest this reasoning in the Commission's Brief.

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

Finally, as noted above, the plain and ordinary language of I.C. § 63-3004's defines the term "Internal Revenue Code" to mean the "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012." The text of I.C. § 63-3004 obviously does not define the term "Internal Revenue Code" to mean "Title 26 of the United States Code." Nevertheless, the Commission misconstrues the IDAPA definition as incorporating into the Idaho Act not only the statutory text of the Internal Revenue Code but also all of Title 26, which is ostensibly an entirely different body of law because, according to the Commission's construction, it includes OLRC's notes which, as has been acknowledged by the Commission, are not part of the Internal Revenue Code. If the Commission's construction of the IDAPA definition were correct, therefore, the IDAPA definition of the Internal Revenue Code is invalid because it contradicts I.C. § 63-3004's plain and unambiguous language which defines the "Internal Revenue Code" as the "Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012" not as "Title 26 of the United States Code."

Although the Commission has authority to make rules implementing the Idaho Act, including the promulgation of the IDAPA definition, the Commission "cannot validly subvert the legislation by promulgating contradictory rules." *Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 814 (2001) (*abrogated on other grounds by Ada County Bd. Of Equalization v. Highlands Inc.*, 141 Idaho 202 (2005)). Furthermore, this Court has stated that it "will not enforce a regulation that is, in effect, a rewriting of the statute." *Moses v. Idaho State*

Tax Comm'n, 118 Idaho 676, 680 (1990); *see also Bogner v. State Dept. of Rev. and Tax'n*, 107 Idaho 854, 856 (1984) ("The Tax Commission's Function is to enforce the law ***as written***.") (emphasis added). Therefore, assuming *arguendo* that the Commission's construction of the IDAPA definition is correct, the IDAPA definition should not be enforced by this Court in the manner suggested by the Commission which would render it in direct conflict with I.C. § 63-3004's clear and unambiguous definition of the Internal Revenue Code as "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012."

At pages 38-39 of the Estate's Opening Brief, the problems with the IDAPA definition's validity, if it is construed to incorporate Title 26 rather than the Internal Revenue Code of 1986, are explained in detail. However, the Commission failed to rebut or even address the Estate's analysis of that issue. Instead, page 23 of the Commission's Brief provides only the following inaccurate and conclusory statement: "[t]he Estate identifies no grounds on which the Court could decline to enforce the regulations, 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." Therefore, the Commission fails to explain why its construction of the IDAPA definition would not render that regulation invalid.

VII. REPEALED § 1022 WAS NOT INCORPORATED INTO THE IDAHO ACT BY I.C. § 63-3004.

As explained in pages 7 and 25 of the Estate's Opening Brief, on December 17, 2010, TRUIRJCA § 301(a) expressly and retroactively repealed § 1022 from the Internal Revenue Code. Nevertheless, the Commission's other fallback argument made at pages 16-20 of the Commission's

Brief is 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." (Commission's Brief page 18.) Given § 1022's complete repeal from the Internal Revenue Code, the clear error of that interpretation is that the plain language of I.C. § 63-3004 only incorporates into the Idaho Act provisions of federal tax law in effect ***as part of the Internal Revenue Code*** on January 1, 2012. Therefore, off-code provisions of federal tax law not part of the Internal Revenue Code on January 1, 2012, such as the Public Law Election and Repealed § 1022, are not incorporated into the Idaho Act.

A. Section 1022 Was Entirely Repealed from the Internal Revenue Code on December 17, 2012.

As discussed at page 25 of the Estate's Opening Brief, § 1022 was repealed in its entirety from the Internal Revenue Code more than a full year before the enactment of the 2012 version of I.C. § 63-3004. First, as noted at page 25 of the Estate's Opening Brief, the clear language of TRUIRJCA § 301(a) indicates that § 1022 was expressly and retroactively repealed from the Internal Revenue Code on December 17, 2010. Second, as discussed at pages 25-26 of the Estate's Opening Brief, § 1022's complete repeal from the Internal Revenue Code and Title 26 is well documented and its absence from Title 26 beginning on December 17, 2010 establishes *prima facie* that Repealed § 1022 was not part of the Internal Revenue Code on January 1, 2012. Moreover, as discussed at pages 26-28 of the Estate's Opening Brief, Congress deliberately relegated § 1022 to "off-code" provision status as it often does with laws that are transitory and/or apply to a limited number of taxpayers. *See* Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649, 658-59 (2006).

On pages 28-30 of the Estate's Opening Brief, the Estate also explained the flaws in the District Court's conclusion TRUIRJCA § 301(e)'s phrase "except as otherwise provided" somehow indicates that the repeal of IRC § 1022 "was not total." The Estate thoroughly explained that TRUIRJCA § 301(e) is nothing more than a common "effective date" provision which is designed to accommodate special provisions, like TRUIRJCA § 301(b), which have effective dates that are unique from the other TRUIRJCA § 301 provisions. The Estate went on to cite several other examples of effective date provisions in TRUIRJCA. (Estate's Opening Brief, p. 29, nn. 16-17.) Rather than challenge these points, the Commission merely quotes verbatim the District Court's cursory reading of TRUIRJCA § 301(e) without addressing the Estate's criticisms. (Commission's Brief, p. 18, n. 2.) Given the analysis referenced above and the Commission's failure to meaningfully object to any of that analysis and its conclusions, there appears to be no reasonable basis for this Court to agree with the Commission's position. Accordingly, this Court should conclude that § 1022 was repealed in its entirety from the Internal Revenue Code on December 17, 2010.

B. <u>The Commission Ignores the Plain Meaning of I.C. § 63-3004.</u>

Given the correct conclusion that § 1022 was repealed from the Internal Revenue Code on December 17, 2010, the Commission apparently argues § 1022's repeal from the Internal Revenue Code is irrelevant because it (1) was at one time an Internal Revenue Code section (prior to December 17, 2010) and (2) the Estate utilized the principles of Repealed § 1022 to calculate its federal income (albeit not pursuant to the Internal Revenue Code as it was in effect on January 1, 2012). Indeed, the Commission states that "Section 1022 was a section of the Internal Revenue Code and was in effect

as to the Estate." (Commission's Brief page 18). Similarly, the Commission also states "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." (Commission's Brief page 18.)

The problem with the Commission's argument, however, is that it ignores the plain language of the 2012 version of I.C. § 63-3004 which explicitly recognizes all "amendments, deletions, or additions" made by Congress to the Internal Revenue Code prior to January 1, 2012. As noted above, the 2012 version of I.C. § 63-3004 is as follows:

> **63-3004. Internal Revenue Code.** – (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended and in effect on the first day of January, 2012.
>
> (b) **Provisions of the Internal Revenue Code** amended, **deleted**, or added **prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such** amendment, **deletions**, or additions, including retroactive provisions.

(Emphasis added). The plain language of this statute requires a snapshot of the Internal Revenue Code of 1986 to be taken on January 1, 2012 with the result that only those federal statutes appearing in that snapshot as part of the Internal Revenue Code are "applicable for Idaho income tax purposes." More specifically, the plain language of the 2012 version of I.C. § 63-3004(b) expressly recognizes that all "amendment, deletions, or additions" made by Congress to the Internal Revenue Code prior to January 1, 2010 are recognized for Idaho income tax purposes. As explained above, TRUIRJCA § 301(a) repealed or "deleted" § 1022 from the Internal Revenue Code it its entirety effective December 17, 2010. As also explained above, the effective date of the 2012 version of I.C. § 63-3004 is January 1, 2012. Therefore, the plain language of I.C. § 63-3004(b) makes clear that § 1022's

repeal "shall be applicable for Idaho income tax purposes." In other words, Repealed § 1022 simply does not appear in the January 1, 2012 snapshot of the Internal Revenue Code of 1986 and is, therefore, not incorporated into the Idaho Act by I.C. § 63-3004.

C. Commission Misconstrues The Words "And In Effect" As Used In I.C. § 63-3004.

At page 18 of the Commission's Brief, it states that "[b]ecause federal law allowed the Estate to use Section 1022 in 2012, it was undoubtedly 'in effect' and incorporated into Idaho law." In making this argument, the Commission ignores I.C. § 63-3004's plain language by misconstruing the meaning of the words "and in effect" as used in I.C. § 63-3004(a).

As noted, the 2012 version of I.C. § 63-3004 defines the term "Internal Revenue Code" to mean the "Internal Revenue Code of 1986 of the United States, as amended ***and in effect*** on the first day of January 2012." (Emphasis added). In I.C. § 63-3004, the words "and in effect" modify the term "Internal Revenue Code of 1986." The plain meaning of the word "effect" reads "[t]he operation of a law, of an agreement, or an act." *See* Black's Law Dictionary 355 (6th ed. 1991) (also noting that "[t]he phrases 'take effect,' 'be in force,' 'go into operation,' etc., are used interchangeably."). Therefore, the group of federal statutes incorporated into the Idaho Act by I.C. § 63-3004 must be both part of the Internal Revenue Code of 1986 on January 1, 2012 **and** "in force" or "in effect" on that date. Although the basis calculation method provided by repealed § 1022 was "in effect" with respect to the Estate for federal income tax purposes, § 1022 itself was not in effect as part of the Internal Revenue Code on January 1, 2012 because, as discussed above, TRUIRJCA totally and completely repealed it from the Internal Revenue Code and that repeal is recognized by the plain

language of I.C. § 63-3004(b).[10] Accordingly, Repealed § 1022 was not part of the Internal Revenue Code's statutory text on January 1, 2012. Consequently, I.C. § 63-3004 did not incorporate § 1022 into the Idaho Act.

The Idaho Attorney General and the Estate have the same interpretation of the words "in effect" as used in I.C. § 63-3004: the Idaho Act only incorporates those sections of the Internal Revenue Code that are "in effect" as part of the Internal Revenue Code on the effective date of the relevant amendment to I.C. § 63-3004 (i.e., January 1, 2012). In the 1995 Idaho Attorney General Opinion described above and in the Estate's Opening Brief, the Idaho Attorney General responded to the Commission's inquiry as to whether a provision of the 1995 Self-Employed Health Insurance Act ("SEHIA"), Pub. L. No. 104-7 that retroactively provided a deduction for certain health insurance costs under § 162(*l*)(6) of the Internal Revenue Code, was incorporated into the Idaho Act by I.C. § 63-3004. 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938. The

[10] 1 U.S.C. § 109, cited in the Memorandum Decision (R. at 000240), does not change this result. That statute is a general savings clause, which provides that "[t]he repeal of any statute shall not have the effect to release or extinguish any ***penalty, forfeiture, or liability*** incurred under such statute, ***unless the repealing Act shall so expressly provide***, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." (Emphasis added). The purpose of this savings provision was "to abolish the common-law presumption that the repeal of a criminal statute resulted in the abatement of 'all prosecutions which had not reached final disposition in the highest court authorized to review them.'" *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 660 (1974). A carry-over basis is not a penalty, forfeiture, or liability and there is no pertinent case law to bridge this gap. To be sure, TRUIRJCA § 301(a) does indeed "expressly provide" for the repeal of Repealed § 1022 as though it "had never been enacted," such that it would not "remain in force" even if 1 U.S.C. § 109 were applicable.

Attorney General noted that President Clinton signed SEHIA into law on April 11, 1995. That date fell after the January 1, 1995 effective date (and the enactment date) of Idaho's then-latest amendment to I.C. § 63-3004 incorporating the Internal Revenue Code "as amended, and in effect on the first day of January, 1995." *Id.* at *1. The Attorney General advised that "[t]he Internal Revenue Code 'as amended, and in effect on the first day of January, 1995' did not permit [the] deduction" because the § 162(*l*)(6) deduction was not part of the Internal Revenue Code on January 1, 1995 and, therefore, "not a deduction available for the computation of Idaho taxes under present Idaho Law." *Id.* at *2. Therefore, the Idaho Attorney General instructed the Commission that the deduction was not incorporated into Idaho law for purposes of I.C. § 63-3004, leaving Idaho taxpayers ineligible to apply that deduction on their 1994 Idaho tax returns. *Id.*

The 1995 Attorney General Opinion involved strikingly similar issues to the case at hand. The § 162(*l*)(6) deduction, was unquestionably "in effect" for purposes of federal tax law for the 1994 tax year. Nonetheless, Idaho law did not incorporate it as part of "the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 1995" because it was not in effect as part of the statutory text of the Internal Revenue Code on January 1, 1995. *Id.* at *2. For that reason, the Idaho Attorney General held that the 162(*l*)(6) deduction applied "retroactively for 1994 ***federal*** tax returns, ***but not for 1994 Idaho tax returns***." *Id.* at *1 (emphasis added).[11]

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[11] Importantly, the Idaho Attorney General cited no other "modifications contained in Idaho law" for the purpose of departing from I.C. § 63-3002's precatory call for similar income tax reporting at the federal and state level. I.C. § 63-3004's limited incorporation of only the statutory text of the Internal Revenue Code of 1986 in effect on January 1, 1995 was the only relevant exception to the general policy declaration of I.C. § 63-3002.

Just as the Idaho Act did not incorporate the IRC § 162(*l*)(6) deduction because it was not part of the Internal Revenue Code on January 1, 1995, the Internal Revenue Code on January 1, 2012 did not include the Public law Election and Repealed § 1022 in its statutory text. Although the Public Law Election and the basis calculation formula provided by Repealed § 1022 were very much "in effect" as off-code provisions for federal tax reporting purposes, simply being "in effect" at the federal level is not enough. Provisions of the Internal Revenue Code must be both (1) "in effect" and (2) part of the Internal Revenue Code as of the relevant date provided by I.C. § 63-3004 (in this case January 1, 2012). The IRC § 162(*l*)(6) deduction at issue in the 1995 Attorney General Opinion was in effect and part of ***a*** version of the Internal Revenue Code of 1986. However, the deduction was not allowed for Idaho income tax purposes because it was not in effect as part of the version of the Internal Revenue Code of 1986 that existed on January 1, 1995. Likewise, neither repealed § 1022 nor the Public Law Election were in effect as part of the version of the Internal Revenue Code that existed on January 1, 2012. Accordingly, these provisions were not incorporated into Idaho Act by I.C. § 63-3004 and should not be considered in calculating the Estate's 2012 Idaho taxable income.

D. Even the District Court Abandoned Its § 1022 Analysis.

In the Commission's Brief, the Memorandum Decision is the sole authority relied on by the Commission in support of its position that Repealed § 1022 was "in effect" and thereby incorporated by I.C. § 63-3004 as part of the Idaho Act. It must be noted, therefore, that the District Court itself acknowledges that its *sua sponte* § 1022 analysis is flawed.

On September 3, 2015, the Estate filed a Memorandum in Support of Motion for Reconsideration and for Amendment of Judgement with the District Court. (R. at 000249-68.) In that Memorandum, the Estate's made many of the same arguments regarding Repealed § 1022 that it makes in the Estate's Opening Brief and above. (R. at 000252-65.) On September 11, 2005, the District Court issued an Order Establishing a Briefing Schedule and on October 13, 2015 the District Court issued an Order For Supplemental Briefing. (R. at 000003; 000303-06.) On November 16, 2015, the District Court issued its Reconsidered Decision. (R. at 000330-58.) In the Reconsidered Decision, the District Court acknowledges that its analysis and its holding its Memorandum Decision was faulty, noting that "[o]ne of the Estate's arguments [in its Motion for Reconsideration] caused the Court to see in a new light the issue the parties had originally asked the Court to decide but the Court had seen as unnecessary to decide: whether [the Public Law Election] was incorporated into the Idaho Income Tax Act for the 2012 tax year." (R. at 000338.) The District Court then went on to state that "the Court concludes it should have decided whether [the Public Law Election] was incorporated into the Idaho Income Tax Act for the 2012 tax year, as the parties originally asked." *Id.* If the District Court continued to believe that "Section 1022 was 'in effect on the first date of January 2012,' as that phrase is used in I.C. § 63-3004, with respect to the Estate," it presumably would not have made that statement, would not have requested additional briefing and would not have issued the Reconsidered Decision based on an analysis entirely different from the Memorandum Decision. Accordingly, it is telling that the only authority the Commission can find to support the proposition that Repealed § 1022 was "in effect" and thereby incorporated into

the Idaho Act by I.C. § 63-3004 is the Memorandum Decision that has apparently been abandoned by the Court that issued it.

VIII. THE COMMISSION'S POLICY ARGUMENTS ARE MISPLACED AND DO NOT OUTWEIGH THE CONSIDERATIONS ADVANCED BY THE ESTATE.

The Commission raises policy considerations that are not even relevant to this appeal. Cited by the Commission are numerous scholarly articles supporting the benefits of "[c]onformance with the federal definitions of income." (Commission's Brief, pp. 23-26.) However, the Commission confuses the incorporation of federal statutes into state income tax acts, like I.C. § 63-3011B's incorporation of the Internal Revenue Code, with a requirement to *report*, on federal and state tax returns, identical sums of taxable income. In fact, none of the articles cited in the Commission's Brief even discuss duplicative federal and state income reporting. *See*, *e.g.*, Ruth Mason, *Delegating Up: State Conformity with the Federal Tax Base*, 62 Duke L. J. 1267, 1277 (2013) ("Although states begin their income calculations with either federal [adjusted gross income] or federal taxable income, ***all states deviate, or decouple, from particular provisions of the federal tax law***.") (emphasis added); *see also Id.* at 1275 ("Today no state directly piggybacks on the federal tax; that is, ***no state calculates its income tax as a simple percentage of federal tax liability***.") (emphasis added).

Furthermore, the Commission's warnings of the dire repercussions that could result in the absence of strictly uniform federal and state income reporting must be tempered by the fact that divergent federal and state income reporting has *already* been required for more than two decades. Once again, the Idaho Attorney General's rejection of retroactive health insurance deductions available under IRC § 162(*l*)(6) affirmatively *demanded* that taxpayers report Idaho taxable income

that differed from their federal taxable income, even though such a requirement is not mentioned anywhere in the Idaho Act. 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938. Whatever negligible consequences arose from the 1995 Attorney General Opinion and its application of IRC § 162(*l*)(6) would be even less perceptible in the case at hand, which only pertains to (1) estates of decedents dying in 2010, (2) that contained assets in excess of the available $5 million exemption[12], and (3) that exercised the Public Law Election for calculating federal estate tax liability.

The Commission's doomsayer predictions also ignore the laws of other states, cited by the Estate at the District Court, which *expressly* deviated from the federal basis step-up rules. Notably, California and Hawaii both based their income tax regimes on the Internal Revenue Code, but grant estates a stepped-up basis regardless of whether the Public Law Election is exercised at the federal level. *See* Cal. Rev. & Tax. Code §18036.6; State of Hawaii, Department of Taxation Announcement No. 2011-21, July 19, 2011. Despite having knowledge of these examples, the Commission fails to cite any reports of major inconveniences to these states or to their taxpayers as a result of these divergences from federal income tax reporting requirements.

More generally, divergence between federal statutes as incorporated into Idaho law and federal laws currently in effect is not unusual. As one example, this Court continued to recognize a 1955 federal voting law that the Idaho Legislature adopted by reference, even though Congress had later repealed the 1955 statute at the federal level. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 849-50 (2012). This Court noted:

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[12] IRC § 2010(c)

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

Id. at 850 (emphasis added) (internal citations omitted). Here, by comparison, the Public Law Election is just another example of Congress' "appointed sphere of action" which is separate and distinct from the Idaho Act's adoption of the basis step-up rules of IRC § 1014.

By contrast, and as the Estate explained in detail before the District Court, interpreting I.C. § 63-3011B to incorporate off-code provisions, such as the Public Law Election would have burdensome ramifications. Many off-code provisions consist of hidden tax breaks and transitory provisions that have no relevance or benefit to Idaho taxpayers. For example, § 1608 of the Tax Reform Act of 1986 preserved charitable deductions to Louisiana State University and the University of Texas for donors who "receive [in return for their donations] the right to seating or the right to purchase seating in an athletic stadium of such institution." Pub. L. No. 99-514, 100 Stat. 2085, 2771. Another off-code tax break is § 977 of the Taxpayer Relief Act of 1997, which enabled Amtrak to carry back its net operating losses several years beyond the carry back period allowed under the Internal Revenue Code of 1986. Pub. L. No. 105-34, 111 Stat. 788, 899. There is no reason to believe that the Idaho Legislature would have intended to incorporate those off-code tax break provisions into the Idaho Act.

The Commission speculates, without providing any supporting explanation or examples, that allowing the Estate to report a different sums of taxable income on its federal and state returns

would somehow complicate the administration of the Idaho Act – despite already being required in Idaho and other jurisdictions. Far more obvious are the complications to Idaho's legislative process that would result from the blanket incorporation of off-code provisions of federal acts. To know the full extent of federal tax law, "a person would have to research each tax act to find a particular non-code provision or be informed in some way as to which tax act contains the non-code provision in question." Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 SMU L. REV. 649, 661 (2006). If the Idaho Act is construed to incorporate off-code provisions, the Legislature will be tasked with researching every federal tax act to ensure that undesirable hidden tax breaks or irrelevant transitory provisions are not incorporated into the Idaho Act. The Legislature's custom of re-incorporating the Internal Revenue Code every year is particularly non-conducive to the Commission's expansive interpretation of Idaho Code § 63-3004.

Moreover, incorporating the off-code Public Law Election would be a windfall for the Commission at the expense of Idaho taxpayers that the Idaho Legislature almost certainly did not intend. Like many off-code provisions, the Public Law Election was designed to enable transitionary relief to estates of decedents dying in 2010 who would have otherwise lost the benefit of the repeal of the federal estate tax previously provided under Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 prior to the enactment of TRUIRJCA. The Public Law Election was contrived as a federal-level *quid pro quo* whereby the Estate could choose to currently forego paying federal estate taxes in exchange for paying higher federal income taxes in the future as the result of the loss of the federal stepped-up basis at death. No *quid pro*

quo exists at the state level because Idaho does not impose estate taxes regardless of whether the Estate receives a stepped-up basis at death.[13] Therefore, it should be apparent that the Idaho Legislature could not have intended to impose a confiscatory state income tax penalty against estates that elect to forego the payment of federal (but not state) estate taxes.

To further demonstrate the absurdity of incorporating the Public Law Election into the Idaho Act, doing so would simply mean that the Estate had the choice of electing to forego Idaho estate tax liability (which have been zero under I.C. § 14-403 since 2005) and take an Idaho carryover basis (which it did not do). Declining to affirmatively make such an election under the Idaho Act would simply subject the Estate to Idaho estate taxes (again, zero under I.C. § 14-403) and grant the Estate an Idaho stepped-up basis in the Ranch. Accordingly, policy considerations overwhelmingly support the Idaho Legislature's decision to not incorporate off-code provisions into the Idaho Act.

IX. THE ESTATE IS ENTITLED TO ATTORNEY FEES ON APPEAL.

As explained on page 10 of the Estate's Opening Brief, the Estate bases its request for attorney fees on I.C. § 63-3049(d) and Rules 40 and 41 of the Idaho Appellate Rules. In particular, I.C. § 63-3049(d)(2) allows attorney fee awards where "[a] party's position in such proceeding is frivolous or groundless." This Court has previously held that the failure of a party to address dispositive authority is "a frivolous position" for purposes of I.C. § 63-3049(d)(2). *Parker v. Idaho State Tax Comm'n,*

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

148 Idaho 842, 850 (2010). In an earlier case, this Court awarded attorney fees against the Commission for having "defended [the] case without foundation and unreasonably in misreading and misinterpreting I.C. §§ 63-3002 and 63-3002 [the precursor to I.C. §§ 63-3011B and 63-3011C] to its advantage." *Bogner v. State Dept. of Rev. and Tax'n*, 107 Idaho 854, 858 (1984).

Here, by failing to even address critical arguments advanced by the Estate, the Commission is taking a frivolous position by unreasonably defending against this appeal without foundation. Examples in this instance include, *inter alia*, the following:

- The Commission ignores the plain language of I.C. §§ 63-3004 and 63-3011B and fails to explain how those statutes can be interpreted as a direction that the "Estate report the same amount of taxable income to Idaho that it reported to the IRS." (Commission's Brief, p. 8.);
- The Commission proposes a construction of I.C. § 63-3002 that if accepted, would render the Idaho Act unconstitutional as an impermissible delegation of the Legislature's authority;
- The Commission provides no explanation for why it ignored the Estate's analysis of the Idaho Attorney General Opinion, 1995 Idaho Op. Atty. Gen. 11, Idaho Op. Atty. Gen. No. 95-2, 1995 WL 247938, that was addressed to the Commission and which directed that Taxable Income be calculated pursuant to the Internal Revenue Code that was in effect on the date I.C. § 63-3004 was enacted irrespective of the amounts reported on a taxpayer's federal return;
- The Commission does not rebut, to any extent, the Estate's analysis of IRC § 7701(a)(29)'s reference to the word "this title" as a reference to the Internal Revenue Title of 1954 rather than Title 26 of the United States Code;

- The Commission fails to explain or even address how the IDAPA definition can be enforced under the Commission's interpretation of that regulation to change I.C. § 62-3004's reference to the "Internal Revenue Code" into a reference to "Title 26" of the United States Code;
- The Commission fails to meaningfully counter the Estate's correct conclusion that IRC § 1022 was retroactively repealed from the Internal Revenue Code on December 17, 2010 notwithstanding the "as otherwise provided" language of the TRUIRJCA § 301(e);
- The Commission ignores the plain text of the 2012 version of I.C. § 63-3004(b) requiring the recognition under the Idaho Act of all amendments, deletions, and additions made to the Internal Revenue Code prior to January 1, 2012;
- The Commission does not rebut 1 U.S.C. § 204(a)'s presumption that Repealed § 1022's absence from the Internal Revenue Code as published in Title 26 of the United States Code beginning on December 17, 2010 establishes prima facie that Repealed § 1022 was not part of the Internal Revenue Code on January 1, 2012.
- The Commission does not challenge the Estate's arguments on page 31 of its Opening Brief that Congress did not follow its "stated means" for amending the Internal Revenue Code by expressly naming in its Public Laws "a section or part of the Internal Revenue Code and then stat[ing] that it '***is amended by inserting*** after section [specified Code section] the following new section' or '***is amended by adding*** at the end the following new section,' ***followed by the new Internal Revenue Code section number and text***." *United States v. Tourtellot*, 483 B.R. 72, 77-78 (M.D. N.C. 2012).

Accordingly, the Court should exercise its discretion to award the Estate its attorney fees on appeal.

X. CONCLUSION.

Based on the foregoing, the weight of the uncontested authority introduced by the Estate overwhelmingly supports the conclusion that I.C. § 63-3011B requires Taxable Income to be calculated pursuant to the provisions of the Internal Revenue Code of 1986 as it existed on January 1, 2012 – including IRC § 1014 – and excluding Repealed § 1022 and the Public Law Election which were not part of the Internal Revenue Code on that date. Therefore, the Estate respectfully reiterates its request that this Court reverse the District Court's Memorandum Decision and Reconsidered Decision, and remand to the District Court with instructions to enter judgment in the Estate's favor for a refund of taxes paid by the Estate in an amount to be determined at trial after recalculation of the Estate's Taxable Income based on the amount realized on the sale of the Ranch reduced by the Estate's income tax basis in the Ranch determined pursuant to IRC § 1014. The Estate further requests an award of costs and attorney fees incurred in this appeal pursuant to I.C. § 63-3049(d) and Rules 40 and 41 of the Idaho Appellate Rules.

DATED this 21st day of July, 2016.

AHRENS DEANGELI LAW GROUP LLP

By: ______________________________

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