

JOINT
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
AND
HOUSE REVENUE & TAXATION COMMITTEE
8:30 A.M.
Lincoln Auditorium
Tuesday, January 16, 2018

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Conformity Overview	Ken Roberts, Chairman, Idaho State Tax Commission
	Tax Year 2017 Conformity	Doreen Warren, Idaho State Tax Commission
	Tax Year 2018 Conformity: Individuals	Cynthia Adrian, Idaho State Tax Commission
	Tax Year 2018 Conformity: Business	Tom Shaner, Idaho State Tax Commission

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
JOINT MEETING
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
HOUSE REVENUE & TAXATION COMMITTEE**

DATE: Tuesday, January 16, 2018

TIME: 8:30 A.M.

PLACE: Lincoln Auditorium

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye
Chairman Collins, Acting Vice Chairman Kauffman, Representatives Moyle, Raybould, Anderst, Dayley, Hartgen, Chaney, Nate, Thompson, Gestrin, Stevenson, Troy, Gibbs, Erpelding, and Gannon

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Collins** called the joint meeting of the Senate Local Government and Taxation Committee and House Revenue and Taxation Committee to order at 8:30 a.m. He welcomed members from both committees and explained that the joint meeting was informational in nature and intended to provide an overview of the impact of federal tax reform on the State of Idaho.

PRESENTATION: **Ken Roberts**, Chairman, Idaho State Tax Commission (Commission), provided an overview of the Tax Cuts and Jobs Act and Idaho conformity. **Chairman Roberts** explained that Idaho's income tax code conforms to the Internal Revenue Code (IRC) annually with the exception of Bonus Depreciation rules and Net Operating Loss (NOL) provisions. He referenced Idaho Code § 63-3002 to demonstrate statutory intent that Idaho conform to the IRC; code conformity relieves the Legislature from creating stand-alone tax code and simplifies tax preparation and administration. **Chairman Roberts** noted that changes to tax brackets, corporate tax rates, Alternative Minimum Tax (AMT), and federal credits for individuals and corporations at the federal level will not affect Idaho income tax or Idaho revenue.

Doreen Warren, Public Information Officer for the Commission, presented information regarding tax year 2017 conformity. **Ms. Warren** stated there are two retroactive provisions that will impact Idaho taxpayers for tax year 2017, the first of which lowers the threshold for itemized medical expenses from 10 percent to 7 percent of federal adjusted gross income (AGI). This provision sunsets on December 31, 2018; the threshold will reset to 10 percent beginning tax year 2019. **Ms. Warren** explained that Idaho conformity to this provision will reduce revenue for fiscal years (FY) 2018 and 2019 by \$6.4 million and \$1.8 million, respectively.

The second retroactive provision will impact multinational corporations that file Idaho income tax returns. **Ms. Warren** explained that businesses will be required to report and pay tax on previously unreported overseas earnings and profits that are in domestically-owned, foreign corporations. Because of the unique nature of multinational taxation and uncertainty as to how these provisions will affect corporations that file Idaho tax returns, **Ms. Warren** observed that legislative action is needed to provide pertinent guidance.

Representative Moyle asked for clarification regarding the revenue projections of this provision in relation to 2017 conformity. **Ms. Warren** asked Tom Shaner, Tax Policy Manager, Idaho State Tax Commission, to respond. **Mr. Shaner** explained the apportionment process utilized to calculate revenue in this regard, as well as the difficulties in determining a dollar amount with certainty at this time. **Representative Moyle** asked if this is one-time revenue, if the Commission will be able to identify the revenue generated as a result of this provision during next year's budget cycle. **Mr. Shaner** responded that because the Internal Revenue Service (IRS) requires corporations to add this revenue to existing dividends, it will be difficult to delineate such revenue with accuracy.

Representative Nate asked if other states utilize data analysis models to generate revenue projections in this regard. **Mr. Shaner** replied that tax laws are too diverse nationally to generate meaningful comparisons. **Representative Nate** commented that it would be beneficial to the budget process to identify a broad dollar estimate.

Senator Siddoway asked for clarification regarding the sunset of the itemized medical expense deductions threshold. **Mr. Shaner** surmised that the sunset date was the result of negotiations.

Senator Burgoyne asked if Idaho chose not to conform to one of the retroactive provisions, regardless of which, would that decision result in administrative or policy problems for the State. **Mr. Shaner** replied that the Commission would have to make adjustments to the tax collection process to capture related data from federal tax forms. **Senator Burgoyne** further inquired if the administrative costs of non-conformity to either provision would be costly and burdensome to the State. **Mr. Shaner** affirmed.

Representative Gannon asked for explanation of why Idaho chooses to conform to the itemized medical expense deductions provision, and if conformity would be affected by the creation of a child tax credit. **Mr. Shaner** explained that the point at which Idaho conforms that captures the itemized medical expenses deductions occurs before federal taxable income is adjusted; a child tax credit would be subsequently factored and would require legislative action.

Representative Hartgen asked when Idaho businesses can begin to adapt to the retroactive federal provisions. **Mr. Shaner** stated that Idaho businesses may begin changing federal withholding tables, but changes to state withholding will depend on legislative action.

Senator Burgoyne asked for clarification regarding how businesses treat repatriated income and how repatriation will impact 2017 taxes. **Mr. Shaner** explained that repatriation represents a shift from a worldwide taxing system at the federal level to a more common territorial system. A failure to conform would put Idaho at a disadvantage with multistate and national corporations.

Cynthia Adrian, Tax Policy Specialist with the Commission, presented information on tax year 2018 conformity. **Ms. Adrian** outlined how changes in the Tax Cuts and Job Act will impact Idaho taxpayers. She noted that while changes to federal tax rates will not impact Idaho, there are many factors that will affect Idaho revenue. First, if Idaho conforms to the federal increase in the standard deduction, Idaho revenue will be reduced by \$340 million. Second, eliminating the personal exemption and dependent exemptions will increase Idaho revenue by \$272.3 and \$139.5 million, respectively. Third, eliminating or capping most itemized deductions will increase Idaho revenue by \$55.3 million. Fourth, changing definitions for qualified expenses from a 529 Education Savings account will reduce Idaho revenue by approximately \$6 million. **Ms. Adrian** stated that current projections estimate an increase in \$118.8 million if Idaho conforms to all current individual provisions.

Mr. Shaner presented information regarding the affect that federal tax reform will have on businesses and Idaho revenue. He stated that if Idaho conforms to all current business provisions as outlined (see Attachment 1), Idaho revenue will be reduced by \$21.4 million. **Mr. Shaner** pointed out that the intent of the Section 199A provision, which reduces most pass-through income by 20 percent on an owner's income tax return, is to balance tax rates between pass-through entities and C corporations. He explained that because Idaho's top tax rate for individuals and the tax rate for corporations are the same, federal justification does not exist for Idaho. **Mr. Shaner** concluded that as the federal law is written, Idaho conformity would include this provision; it would require legislative action to deviate from that provision.

Representative Nate asked about the accuracy of the total projected revenue increase. **Mr. Shaner** responded that the Commission strives for accuracy in its estimations, and that possible deviations from the projected dollar amount may result from the varying state of the economy.

Representative Gannon sought clarification regarding federal child tax credits and asked if the Commission had considered a proportionate credit or exemption at the state level. **Mr. Shaner** explained that the federal tax credit is \$2,000 per child; creating a proportionate tax credit at the state-level requires legislative action.

Senator Patrick asked for clarification regarding accelerated depreciation and simplified accounting, specifically whether the revenue reduction is ongoing or recalculated annually. **Mr. Shaner** explained that these projections are calculated annually.

Representative Erpelding asked for clarification regarding inclusion of income in the 2018 tax year; he asked if this revenue is a product of tax policy change rather than new income. If so, he queried if the amount will be different in the 2019 tax year. **Mr. Shaner** stated this is accurate in a general sense.

Senator Bayer asked if information is available regarding the implications of federal tax liability for Idaho individuals and businesses, either at the state or federal level. **Mr. Shaner** replied that the Commission does not have this information.

Senator Burgoyne asked if the Commission examined how many Idahoans will be affected by the state and local property tax deduction cap of \$10,000. **Mr. Shaner** explained that the Commission is examining this issue, but estimates the amount of tax filers in this category to be 45,000.

Senator Vick asked if lowering the corporate tax rate would alleviate the need to balance tax rates between pass-through entities and C corporations, as outlined in Section 199A. **Mr. Shaner** replied that a disparity between wage earners and business owners would still exist.

Chairman Roberts provided closing remarks. He emphasized the importance of tax policy that simplifies tax preparation and administration. He also noted that the Economic and Revenue Assessment Committee will address potential fiscal effects of increased economic activity on revenue projections.

ADJOURNED: There being no further business at this time, **Chairman Collins** adjourned the meeting at 9:38 a.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

Federal Tax Reform – Idaho Impact

The potential effect of federal tax reform for Idaho

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. This legislation includes provisions that will impact Idaho taxpayers in both 2017 and 2018. Those provisions will require careful consideration by the 2018 Idaho Legislature to determine the effect on Idaho taxpayers.

Because Idaho's Income Tax Code uses the Internal Revenue Code (IRC) as a starting point, Idaho's income tax returns begin with the federal adjusted gross income (AGI). Historically, Idaho lawmakers have generally conformed to the IRC on an annual basis except for the Bonus Depreciation and Net Operating Loss provisions.

I. Conformity Overview

1. Idaho Conformity: Because Idaho conforms to the federal calculation of taxable income:
 - a. Any changes that affect these calculations will impact the Idaho return and Idaho revenue.
 - i. Idaho will study any change and decide whether or not to conform.
 - b. Any changes that affect only the federal tax rates or credits will have no impact on the Idaho return or Idaho revenue.
2. No Idaho Impact: The following changes only affect the federal tax rates or credits and will have no impact on the Idaho income tax return or Idaho revenue.
 - a. Tax brackets.
 - b. Corporate tax rate.
 - c. Alternative Minimum Tax.
 - d. Any of the federal credits, both business and individual.
 - e. Federal Net Operating Loss (NOL)
 - i. Idaho doesn't currently conform to federal NOL.
 - f. Bonus depreciation rules – immediate expensing.
 - i. Idaho doesn't currently conform to federal bonus depreciation.

II. Tax Year 2017 Conformity

1. Retroactive Provisions - Individuals: The implementation date of federal reform affects state tax administration. For individuals, the tax reform areas mainly impact tax year 2018 except for the threshold for itemizing medical expenses. The federal change to itemized medical expense deductions (reduces the threshold for all taxpayers from 10% to 7.5% of federal AGI to claim this deduction) takes effect for tax years after 12/31/16 and sunsets 12/31/18. This will affect the Idaho 2017 and 2018 tax years, and the changes will reset back to 10% for the 2019 tax year and forward.
 - a. To prepare for the tax year 2017 filing season that typically begins in January, the following actions have been completed or are currently underway:
 - i. Forms are finalized.
 1. If Idaho conforms to the threshold for itemizing medical expenses:
 - a. The Idaho State Tax Commission will need to inform taxpayers and tax professionals.
 - b. No form changes are required; however, instructions will need to be updated and communicated.

- c. Reduces FY2018 and FY2019 Idaho revenue by approximately \$6.4 million¹ and \$1.8 million^{6b} respectively. Calculations are based on Joint Committee on Taxation (JCT) estimates.
 2. If Idaho doesn't conform to the threshold for itemizing medical expenses:
 - a. The Tax Commission will need to provide outreach, instructions, and a worksheet for taxpayers to calculate a modified Schedule A (schedule for itemizing deductions).
 - b. The calculation difference isn't easily identified while processing returns and would be subject to audit to determine appropriate calculations.
 - ii. Tax year 2017 internal processing requirements have been developed.
 1. Conformity doesn't require internal processing system changes.
 - iii. Software developers have programmed tax year 2017 requirements to market products to taxpayers by January 2018.
 1. Conformity requires industry software changes.
2. Retroactive Provisions – Business²: There are some significant and unprecedented changes to the treatment of foreign income of affiliates and dividends received from foreign subsidiaries. Some of these federal changes are retroactive to tax year 2017 and are in place as of the signing of the federal law.
 - a. These will have unknown effects on multinational corporations that file Idaho income tax returns. It's difficult to estimate the changes that are likely to occur, since we have a mixture of worldwide and water's edge filers. The tax reform legislation creates some new Internal Revenue Code sections for some of these changes. The actual results will depend on whether our statutes address some of the issues. We're also not able to anticipate taxpayer filing behavior. Large multinational corporations have more choices than typical individuals do in their filing methods.
 - b. Responding to federal changes on international activities requires prompt legislative action by the Idaho Legislature because the federal effective date for some provisions is for tax year 2017. Due to the unique nature of multinational taxation, statutory changes would be needed. More research and legislative discussions will need to take place to fully identify the impact on Idaho taxpayers and Idaho revenue.
3. Tax Year 2017 Conformity: The first conformity bill to be considered in the Idaho 2018 legislative session will be the conformity for tax year 2017, including the retroactive provisions.

III. Tax Year 2018 Conformity – Individuals

1. Even though the Idaho legislature would normally address tax year 2018 conformity during the 2019 legislative session, there are several dramatic changes in the Tax Cuts and Jobs Act that may require immediate statutory guidance for Idaho taxpayers. The guidance would help ensure taxpayers are prepared for filing their tax year 2018 Idaho income tax returns.
 - a. In addition to the taxpayer guidance, the 2018 Idaho Legislature may want to consider statutory changes to address Idaho revenue changes resulting from the federal tax reform.

- b. Changes made for tax year 2018 will require timely communication to taxpayers:
 - i. How the 2018 tax code affects them.
 - ii. How the 2018 tax code affects payroll withholding.
 - iii. If adjustments need to be made for their Idaho estimated payments:
 1. Individual estimated payments – tax year 2015 = 4,800 taxpayers
 2. Business estimated payments – tax year 2015 = 9,300 taxpayers
2. Federal tax rate changes—No direct effect on Idaho.
3. Standard deduction increased—Reduces Idaho revenue by \$340.5 million³.
 - a. Calculating the standard deduction based on historical taxpayer filing status.
 - b. *Estimate based on multiplying the estimated number of Idaho 2018 returns claiming the standard deduction by the 2018 marginal increase for the standard deduction. This total was reduced by 5% to account for the estimated percentage of Idaho filers that will still itemize.*
4. Eliminating the personal exemption—Increases Idaho revenue by \$272.3 million⁴.
 - a. Counting one exemption for Single or Head of Household & two for Married Filing Joint.
 - b. *Estimate based on multiplying the estimated number of Idaho 2018 personal exemptions by the 2018 exemption amount.*
5. Eliminating dependent exemptions—Increases Idaho revenue by \$139.5 million⁵.
 - a. *Estimate based on multiplying the estimated number of Idaho 2018 dependent exemptions by the 2018 exemption amount.*
6. Eliminating or capping most itemized deductions—Increases Idaho revenue by \$55.3 million^{6a}.
 - a. *Estimate based on using a portion of the federal estimate made by the Joint Committee on Taxation, December 18, 2017, times the Idaho effective tax rate. This total was reduced by 25% to account for the lower property taxes in Idaho.*
7. Changing the definitions for qualified expenses from a 529 Education Savings account — Reduces Idaho revenue by approximately \$6 million⁷.
 - a. *To calculate the estimated expenses, we multiplied 14,138 (Idaho students enrolled in private schools) by \$6,382 (estimated expense per student).*
 - i. *The average tuition amounts of \$5,069 for K-8 and \$6,757 for high school are now allowed, plus buying computers, uniforms, and other school-related expenses.*
 - ii. *The cap is at \$10,000 per year of expenses. We used \$6,382 per student as an estimate.*
8. Current estimate of the effect to Idaho revenue if all current individual provisions of the bill are adopted by Idaho is +\$118.8 million.
9. Idaho withholding calculations use the federal Form W-4, which currently collects the employee's filing status and number of exemptions. Idaho's 2018 withholding table calculations use the filing status, exemptions, and tax bracket information.
 - a. The IRS has announced that it will temporarily design and implement changes to work with the existing Forms W-4 that employees have already filed.
 - i. IRS intends to publish changes in January for implementation in February.
 - b. Once the Idaho Legislature decides on Idaho's direction, the Tax Commission will be able to communicate and provide guidance to employers and employees.

IV. Tax Year 2018 Conformity - Business

Current estimate of the effect to Idaho revenue if all current business provisions of the bill are adopted by Idaho is approximately -\$21.4 million. *Estimates based on historic estimating calculations using the Joint Committee on Taxation analysis.*

1. Federal tax rate changes—No direct effect on Idaho.
2. Increase of IRC Section 179 expense limit to \$1 million – Reduces Idaho revenue by \$6.0 million⁸.
 - a. The section 179 is an immediate expensing or accelerated depreciation election. The new law raises the expense limit from \$500K to \$1 million. The phase-out is increased from \$1 million to \$2.5 million.
 - b. Bonus depreciation (section 168(k)) is a separate issue and Idaho doesn't conform to that section.
3. Simplified accounting for small business – Reduces Idaho revenue by \$12.8 million⁹.
 - a. Simplified accounting increases the threshold for a business to be required to use accrual basis accounting from \$5 million in gross receipts to \$25 million. For example, a business will be able to take a deduction for some additional items that it previously would have kept as an asset until it was used.
4. Interest expense limited to 30% – Increases Idaho revenue by \$14.2 million¹⁰.
 - a. Interest expense deductions for a business are being limited to 30% of the sum of adjusted taxable income and taxable interest income. The excess will be carried forward in the federal NOL, which Idaho doesn't conform to. Idaho would have to address this to allow businesses to carry the excess over so they don't lose that in Idaho.
5. 1031 exchanges limited to real estate – Increases Idaho revenue by \$0.8 million¹¹.
 - a. The section 1031 exchange allows deferring reporting any gain on the exchange of property except for cash received, until ultimately sold. This provision limits exchanges of like-kind property to real property.
 - i. No longer allows like-kind exchanges for other investment property such as buildings or art.
6. S corporation to C corporation conversion rules – Reduces Idaho revenue by \$0.8 million¹².
 - a. The S corporation to C corporation conversion will allow some post conversion distributions.
7. Inclusion of income (more choices) – Increases Idaho revenue by \$2.0 million¹³.
 - a. The inclusion of income provision requires businesses to report taxable income no later than when it is reported on their financial statement.
8. Repeal Section 199, the domestic production deduction – Increases Idaho revenue by \$7.3 million¹⁴.
 - a. The original intent was to encourage investment in domestic facilities. With the new federal territorial tax regime established with the Tax Cuts and Jobs Act, Congress didn't think this provision was still necessary.
9. Repeal employee entertainment expense – Increases Idaho revenue by \$2.7 million¹⁵.
 - a. Part of the justification for lowering the corporate rate was to eliminate some of the deductions. Employee recreational memberships are not allowed. Professional memberships for business are allowed.

10. Repeal employee transportation and parking reimbursement – Increases Idaho revenue by \$2.0 million¹⁶.
 - a. Employee commuting and parking expenses are no longer allowed.
11. Section 199A—reduce most pass-through income by 20% on the owner’s income tax return – Reduces Idaho revenue by \$30.8 million¹⁷.
 - a. The intent of this provision is to balance the tax rates between pass-through entities and C corporations. Because Idaho’s top tax rate for individuals and the tax rate for corporations are the same, the federal justification doesn’t exist for Idaho.
 - b. As the federal legislation is written, Idaho's conformity would pick up this provision. The Idaho Legislature would need to take specific action in a separate bill to not conform to this provision.

Federal Tax Reform – Idaho Impact Detail Summary

2017 CONFORMITY	
RETROACTIVE PROVISIONS	
	In Millions \$
1. Medical threshold	(\$6.4)
2. International	Positive unknown

2018 CONFORMITY	
INDIVIDUAL	
	In Millions \$
3. Standard deduction increase	(\$340.5)
4. Personal exemption	\$272.3
5. Dependent exemption	\$139.5
6a. Itemized deductions	\$55.3
6b. Residual medical threshold from 2017	(\$1.8)
7. Education expenses	(\$6.0)
Total Individual	118.8
BUSINESS	
8. Section 179	(\$6.0)
9. Simplified accounting	(\$12.8)
10. Interest expense	\$14.2
11. 1031 exchanges	\$0.8
12. S corp. to C corp. conversion	(\$0.8)
13. Inclusion of income	\$2.0
14. Repeal Section 199	\$7.3
15. Repeal entertainment expense	\$2.7
16. Repeal employee transportation	\$2.0
17. Section 199A--pass-through	(\$30.8)
Total Business	(21.4)
Total Effect 2018 Conformity	\$97.4

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, January 16, 2018

SUBJECT	DESCRIPTION	PRESENTER
Introduction	Welcome to Senate Page Christine Peterson	Chairman Johnson
Docket No.	RULES REVIEW	
35-0102-1701	Idaho Sale and Use Tax Administrative Rules	Tom Shaner, Idaho State Tax Commission
35-0102-1702	Idaho Sales and Use Tax Administrative Rules	
35-0102-1703	Idaho Sales and Use Tax Administrative Rules	
35-0106-1701	Hotel/Motel Room and Campground Sales Tax Administrative Rules	
35-0106-1702	Hotel/Motel Room and Campground Sales Tax Administrative Rules	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
 Vice Chairman Bayer
 Sen Hill
 Sen Siddoway
 Sen Rice

Sen Vick
 Sen Patrick
 Sen Burgoyne
 Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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 Phone: 332-1315
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 16, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

INTRODUCTION: **Chairman Johnson** welcomed Committee Page, Christine Peterson, and asked her to provide a personal introduction.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

DOCKET NO. 35-0102-1701 **Idaho Sales and Use Tax Administrative Rules. Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented this docket of pending rules.

The proposed changes to Section 067 relate to fiber optic and communication cables. **Mr. Shaner** noted that changes were made to clarify that fiber optic and communication cabling installed in a building is presumed to be an improvement to real property rather than personal property. He noted that this was negotiated rulemaking with input from industry.

Senator Patrick asked for clarification regarding how tax is applied to fiber optic cabling. **Mr. Shaner** explained that this rule determines whether to apply sales tax or use tax when a contractor installs cabling.

MOTION: **Senator Patrick** moved to approve **Docket No. 35-0102-1701**. **Senator Siddoway** seconded the motion.

Senator Burgoyne asked if the Commission encountered opposition during the rulemaking process. **Mr. Shaner** replied that many questions were raised, but there was no opposition to the proposed changes.

The motion carried by **voice vote**.

DOCKET NO. 35-0102-1702 **Idaho Sales and Use Tax Administrative Rules. Mr. Shaner** presented the proposed changes to Section 013, which relate to road and paving contractors. The proposal adds examples to clarify when materials used by road and paving contractors are subject to sales and use tax. He noted that this was negotiated rulemaking and that the Commission encountered opposition during this process.

Senator Hill asked for clarification regarding the phrase "supervision of the person" in the context of this rule. **Mr. Shaner** provided an example that materials purchased by a highway district are tax exempt, and the contractor applying the materials under the supervision of the highway district is simply providing a service of labor. **Senator Hill** then asked if the materials would be subject to tax if a contractor was not under the supervision of a highway district or local entity. **Mr. Shaner** affirmed and explained that rulemaking was conducted to clarify these circumstances.

Senator Rice referenced Idaho Code § 63-3621(m) and observed that none of the proposed examples in Subsection 13.03 recognize the application of use tax when property, such as a gravel pit, is donated. **Mr. Shaner** stated that the Commission will need additional time to respond. **Senator Rice** then posited that the proposed examples appear to violate Article 7, Section 4 of the Idaho Constitution. He explained that the interpretation of the statutes may be reasonable if examined in isolation; however, if a subdivision of the state already owns property, and sales or use tax is being imposed on that property - regardless of who performs the labor - the application of tax in this instance would be violative of the Idaho Constitution. **Mr. Shaner** stated that the Commission will need additional time to respond.

MOTION: **Senator Rice** moved to hold **Docket No. 35-0102-1702** subject to the call of the Chair. **Senator Vick** seconded the motion.

Vice Chairman Bayer stated the Committee will hear public testimony before proceeding with the motion.

TESTIMONY: **Rick Smith**, representing Johnny B Transport and Idaho Asphalt Supply, spoke in opposition to the proposed changes to Section 013, specifically as applied to chip sealing companies. He identified two areas of objection: 1.) whether a chip sealer has sufficient control over asphalt to satisfy statutory use requirements, and 2.) if chip sealing constitutes an improvement to real property. **Mr. Smith** explained that litigation in 1984 directly addressed whether chip sealing activity represents a use by the service provider of the asphalt in question. That case held that the chip sealer did not have sufficient control over asphalt to satisfy statutory use requirements. **Mr. Smith** acknowledged a level of ambiguity in determining use in these circumstances but argued that legal precedent construes tax imposition in favor of the taxpayer. **Mr. Smith** then addressed the second point of objection. He argued that chip sealing does not constitute improvement to real property. Contractors are subject to use tax when they make improvements to real property. **Mr. Smith** contended that chip sealing is a maintenance activity; it constitutes road preservation rather than construction or improvement.

Senator Burgoyne asked Mr. Smith to distinguish contractor ownership over materials used to improve real property from property owners' ownership over these materials in the context of Section 013. **Mr. Smith** conceded that ownership is not a consideration when applying use tax; chip sealing companies do not own the materials, they transport and apply them. **Senator Burgoyne** asked if double taxation would present an issue if two non-governmental entities engaged in the same activities. **Mr. Smith** replied that he was not aware of double taxation occurring in this context.

Senator Rice asked Mr. Smith to comment on the applicability of the 1984 district court case if proposed regulation had only prospective application. **Mr. Smith** explained that the court stated that a taxing authority, in this case the Commission, has the authority to develop regulations that define imposition of tax. In this case, a regulation could have been circulated to companies, such as Idaho Asphalt, who could then adjust their pricing to include the tax. **Mr. Smith** stated that a standard has been set by the court in this case that precludes the need to promulgate a rule. **Senator Rice** then asked if the 1984 court decision would merely be a *res judicata* decision or if the doctrine of *collateral estoppel* would apply to the Commission in its imposition of tax on other companies engaged in the same activity. **Mr. Smith** felt that both doctrines would apply in a litigation setting.

Senator Burgoyne asked, in reference to the issue of *res judicata* and *collateral estoppel*, if this decision could be applied more broadly. **Mr. Smith** stated that the doctrine of *collateral estoppel* would apply statewide and in his opinion, the 1984 court decision provided legal precedent on this issue for the past three decades. **Senator Burgoyne** inquired if a taxing entity is able to promulgate a rule that challenges this decision. **Mr. Smith** stated that the Commission litigated and lost on the issue of whether the spreading of asphalt represented a use subject to tax.

Senator Hill asked if the statute relating to sales and use tax is unclear, and if so, could a statute create a bright line exemption for chip sealing activities. **Mr. Smith** responded that the statute is ambiguous, but examples could be written to clearly delineate these activities.

Senator Nye asked if sodding or landscaping would be considered improvement to real property. **Mr. Smith** affirmed.

Wayne Hammond, representing Idaho Associated General Contractors, spoke in support of the proposed changes to Section 013. **Mr. Hammond** stated that if a county employee is supervising chip sealing work, the worker performing the work is not considered a contractor, he is merely providing the service of labor; however, if a contractor is supervising the chip sealing work or performing the labor, then use tax would apply. He asked for consistency in the application of this rule when contractors supervise and perform this type of work. **Mr. Hammond** commented that the distinction of chip sealing as a maintenance activity or improvement to real property is irrelevant - all contracting work should be subject to tax.

Ken Roberts, Chairman of the Commission, stated that the examples proposed to be added to Section 013 were provided to offer guidance to contractors in this arena due to irregularities in how tax code is applied. The Commission's intent behind this rule is to provide uniform application of tax law. **Chairman Roberts** commented that the Legislature could create an exemption that addresses this issue in Idaho Code § 63-3622, but the exemption would have a financial impact on state revenue.

Senator Rice asked if the Commission would consider a code clarification, rather than a rule, to provide clarity. **Chairman Roberts** stated that the Commission believes the statute is clear on this issue and that the 1984 district court decision is not consistent with sales tax law. **Senator Rice** asked if the Commission has the authority to promulgate rules that are inconsistent with legal precedent. **Chairman Roberts** responded that the Commission's intent is to provide uniform application of tax law.

Senator Burgoyne commented that he does not believe that taxpayers are being treated unfairly because the tax is ultimately being paid by some entity. In his opinion, the statute must be interpreted by rule unless the statute itself is changed; there is a sound basis for rulemaking, and the issue that needs to be resolved is the scope of the examples provided.

Vice Chairman Bayer asked Senator Rice to clarify his original motion.

MOTION: **Senator Rice** moved that **Rule 013** of **Docket No. 35-0102-1702** be held subject to the call of the Chair. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

Mr. Shaner presented the proposed changes to Section 044, amended consistent with 2017 HB 156, which will add related terminology and statute references.

The proposed changes to Section 061, amended consistent with 2017 HB 156, will add statute references. These references will include transportation, freight, and handling charges in the purchase price of a park model recreational vehicle and thus subject to sales tax.

The proposed change to Section 079, amended consistent 2017 HB 156, will add a code reference to the production exemption to clarify that park model recreational vehicles are not eligible for the production exemption.

The proposed change to Section 099, amended consistent with 2017 HB 156, will add a statute reference to the title.

The proposed changes to Section 107 will add or change definitions to make these provisions consistent with 2017 HB 156.

The proposed changes to Section 128, amended consistent with 2017 HB 156, will add statute references and delete form references.

MOTION: **Senator Rice** moved to approve **Docket No. 35-0102-1702**, with the exception of Section 013 to be held subject to the call of the Chair. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0102-1703 **Idaho Sale and Use Tax Administrative Rules.** **Mr. Shaner** presented the proposed changes to Section 028, amended consistent with 2017 HB 216, which will add language within the sales tax rules section to reflect changes made to Idaho Code § 63-3612(2).

Section 103 has become obsolete, and **Mr. Shaner** explained that it is being removed to align with the passage of legislation removing the exemption for hand tools under \$100.

MOTION: **Senator Rice** moved to approve **Docket No. 35-0102-1703**. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0106-1701 **Hotel/Motel Room and Campground Sales Tax Administrative Rules.** **Mr. Shaner** presented the proposed changes to Section 001, amended consistent with 2017 HB 216, which will add language to clearly identify that short-term rentals are subject to sales tax and the Greater Boise Auditorium Tax. It will also introduce the term "short-term rental marketplace."

Senator Nye asked if there are other tax classifications similar to the Greater Boise Auditorium Tax. **Mr. Shaner** replied that short-term rentals are subject to any travel and convention tax in their respective district.

The proposed changes to Section 018, amended consistent with 2017 HB 216, pertain to filing returns. **Mr. Shaner** explained that because of the short-term rental marketplace and funds expected from additional travel and convention districts, the hotel tax was redesigned to allow for reporting by county. The requirement to obtain a separate permit for each location will be removed, which will facilitate more efficient reporting procedures.

Senator Hill asked why Subsection 18.02 will be deleted. **Mr. Shaner** explained that a more specific identification system of rentals locations will be implemented to ensure accurate reporting.

Proposed changes to Section 019 add terms introduced in 2017 HB 216.

MOTION: **Senator Hill** moved to approve **Docket No. 35-0106-1701**. **Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0106-1702 **Hotel/Motel Room and Campground Sales Tax Administrative Rules**. **Mr. Shaner** presented proposed changes to Section 006, which will promulgate a new rule to add reference statutes created in 2017 HB 216. The new rule indicates the Commission deemed it necessary, due to the nature of electronic transactions of short-term rental marketplaces. He noted that a short-term rental marketplace will have 45 days from the completion of their first lodging in Idaho to obtain a sale tax permit.

CONFLICT OF INTEREST: Pursuant to Senate Rule 39(H), **Senator Vick** disclosed a possible conflict of interest under applicable law.

MOTION: **Senator Siddoway** moved to approve **Docket No. 35-0106-1702**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 4:32 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 17, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25760</u>	Relating to Fire Protection District Elections	Chairman Johnson
<u>RS25770</u>	Relating to Compensation of Fire Protection District Commissioners	Chairman Johnson
Docket No.	RULES REVIEW	
<u>35-0103-1701</u>	Property Tax Administrative Rules	Alan Dornfest, Idaho State Tax Commission
<u>35-0103-1704</u>	Property Tax Administrative Rules	
<u>35-0103-1706</u>	Property Tax Administrative Rules	
<u>35-0103-1707</u>	Property Tax Administrative Rules	
<u>35-0103-1709</u>	Property Tax Administrative Rules	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 17, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, and Nye

ABSENT/ EXCUSED: Senators Patrick and Burgoyne

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:03 p.m.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

RS 25760 **Relating to Fire Protection District Elections.** **Chairman Johnson** presented **RS 25760**, which will remove language regarding the election notification process of fire protection districts, bringing this process into compliance with Idaho Code § 34-1406.

MOTION: **Senator Hill** moved to print **RS 25760**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

RS 25770 **Relating to Compensation of Fire Protection District Commissioners.** **Chairman Johnson** presented **RS 25770**, which will amend Idaho Code § 31-1421 to increase the daily compensation for fire protection district commissioners.

MOTION: **Senator Hill** moved to print **RS 25770**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0103-1701 **Property Tax Administrative Rules.** **Alan Dornfest**, Property Tax Policy Bureau Chief, Idaho State Tax Commission (Commission), presented this pending rule docket.

The proposed changes to Section 509 pertain to abstracts of taxable value of real property and identification of urban renewal increment and partial exemption values. Abstracts are summary documents, prepared by county clerks, that counties provide to the Commission on behalf of taxing districts. **Mr. Dornfest** stated that many county clerks expressed concern about the accuracy of information they received from assessors and auditors. The Commission worked with county clerks to clarify this process and outline document signature requirements.

The proposed changes to Section 609 pertain to the homeowner's exemption as it applies to partial ownership of property. **Mr. Dornfest** reported that historically, when there was an unspecified interest in community property among three parties, partial ownership was divided into thirds for the purposes of this exemption. With input from various county prosecutors' offices and Commission legal staff, the Commission determined the community property interest needed to be changed to provide uniformity throughout the State. The rule change instructs assessors to calculate the community property interest for partial ownership as 50 percent rather than 66 2/3 percent.

Vice Chairman Bayer asked for clarification regarding the number of homeowners potentially impacted by this change. **Mr. Dornfest** reported that within the Circuit Breaker Property Tax Reduction (PTR) program - which will also be impacted by this change in a companion rule - 83 of 27,000 accounts would be affected. This would result in \$800 of additional benefits being paid from the \$17 million benefit program.

Senator Hill commented on how the interpretation of unspecified ownership interests in partial ownership property by the Commission has changed since 1998, rendering the community property interest at 66 2/3 percent rather than 50 percent of total ownership. He asked Mr. Dornfest to explain what changes occurred to authorize this potential increase in taxation. **Mr. Dornfest** stated that the potential change in taxation is a result of a change in interpretation of how to apply the exemption to community property interests when ownership is not specified. The proposed rule is intended to provide consistency in the application of the exemption.

Senator Rice inquired if the Commission is reacting to county prosecutors advising counties to not adhere to current law. **Mr. Dornfest** stated that the Commission agrees with and supports the proposed rule changes. **Senator Rice** commented that the legal presumption for a tenancy in common is that each party has an equal share of property unless proven otherwise; he questioned the legality of treating a husband and wife as one entity in such a circumstance.

Mr. Dornfest asked George Brown, Deputy Attorney General assigned to the Tax Division of the Commission, to discuss the legal basis for the proposed rule change. **Mr. Brown** indicated that interpretation and application of this rule was not uniform among counties. During the rulemaking process, and with input from county prosecutors, the Commission determined that uniformity as to how unspecified partial interests are treated for exemption purposes was appropriate.

Senator Rice commented that in his experience, a married couple on a deed is represented as husband and wife, regardless of the percentage of ownership. He asked Mr. Brown to address how community property deeds are treated differently. **Mr. Brown** stated that in his opinion, for community property, a husband and wife are considered one entity and entitled to 50 percent.

Mr. Dornfest continued to present **Docket No. 35-0103-1701**. The proposed change to Section 619, which pertains to the statutory exemption for facilities for water or air pollution control, will change the filing date from March to April 15 to conform to Idaho Code § 63-602 and provides consistency with other exemptions.

Section 700 is a companion rule to Section 609 and will apply the same changes to the Circuit Breaker (PTR) program. It will also update the homeowner's exemption to \$100,000.

The proposed changes to Section 804 pertain to the computation of a tax levy rate when an urban renewal district and taxing district overlap. **Mr. Dornfest** reported that the date for an urban renewal agency to submit attestation regarding plan modifications will be changed to the first Monday of June to conform to statute. The proposal will also create a new subsection stating that when there is refinancing of bonded debt, the bond is not considered a new bond but may still generate revenue for urban renewal agencies.

The proposed changes to Section 995 pertain to the disbursement of withheld sales tax funds when taxing districts or urban renewal agencies return to compliance with reporting requirements outlined in Idaho Code §§ 67-450E and 50-2913. Once in compliance, the Commission must remit previously withheld sales tax revenue no later than the next quarterly sales tax distribution due date.

MOTION:

Senator Rice moved to approve **Docket No. 35-0103-1701** with the exception of Sections 609 and 700. **Senator Vick** seconded the motion.

Vice Chairman Bayer called for a roll call vote. **Senators Rice** and **Vick** voted aye. **Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway,** and **Nye** voted nay. The motion failed.

MOTION: **Senator Hill** moved to approve **Docket No. 35-0103-1701. Senator Siddoway** seconded the motion.

Chairman Johnson commented on the legal complexities of this docket and asked that the Commission keep the Committee informed of relevant problems as they arise in the future.

The motion carried by **voice vote**.

Due to scheduling considerations, the Committee deferred discussion on **Docket No. 35-0103-1704**.

**DOCKET NO.
35-0103-1706**

Property Tax Administrative Rules. Mr. Dornfest indicated that Sections 610 and 709 are companion rules to Section 609 and both pertain to the administration of the homeowner's exemption. Section 610 will change the community property interest examples from two-thirds to one-half. **Senator Rice** asked if the rule change is written in a way that precludes the ability of an owner to prove the interest is different than one-half by a husband and wife. **Mr. Dornfest** replied that the rule simply provides examples and the Commission defers to the specific interests detailed in a deed. He stated that Section 709 pertains to the Circuit Breaker PTR program and makes the same changes to partial interest from two-thirds to one half.

Chairman Johnson inquired as to input received during negotiated rulemaking. **Mr. Dornfest** stated the Commission worked on this rule change for two years and did not receive any public comments.

Senator Rice asked if the Commission sought input from senior citizen groups during the rulemaking process. **Mr. Dornfest** replied the Commission did not contact such groups.

MOTION: **Senator Siddoway** moved to approve **Docket No. 35-0103-1706. Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
35-0103-1707**

Property Tax Administrative Rules. Mr. Dornfest presented Section 020, amended consistent with 2017 HB 156, which pertains to the valuation of recreational vehicles. Assessors needed guidance as to how to collect registration fees and property tax for park model recreational vehicles. **Mr. Dornfest** explained that this rule will create procedures for assessors to value such vehicles.

MOTION: **Senator Rice** moved to approve **Docket No. 35-0103-1707. Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
35-0103-1709**

Property Tax Administrative Rules. Mr. Dornfest presented Section 006 which pertains to incorporation by reference. This section is updated annually to ensure current references to publications and reference materials. He indicated that the Commission monitors and updates obsolete reference materials and URLs to ensure the most current information is referenced.

Section 406, amended consistent with 2017 HB 30, pertains to the valuation of rate-regulated electric utilities. **Mr. Dornfest** explained that the flotation cost component of 0.20 percent must be added to the market discount rate when valuing rate regulated electric utility companies; this change will be made to Section 406 to align the rule to statute. Additionally, an obsolete URL link was deleted.

MOTION: **Senator Nye** moved to approve **Docket No. 35-0103-1709. Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 4:00 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, January 18, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 335</u>	Relating to Employment Security Law	Melinda Smyser, Director, Idaho Department of Labor
<u>RS25679</u>	Relating to Distribution of Sales Tax Revenue	Tom Shaner, Idaho State Tax Commission
Docket No.	RULES REVIEW	
<u>35-0101-1701</u>	Income Tax Administrative Rules	Cynthia Adrian, Idaho State Tax Commission
<u>35-0109-1701</u>	Idaho County Option Kitchen and Table Wine Tax Administrative Rules	
<u>35-0109-1702</u>	Idaho County Option Kitchen and Table Wine Tax Administrative Rules	
<u>35-0110-1701</u>	Idaho Cigarette and Tobacco Products Tax Administrative Rules	
<u>35-0112-1701</u>	Idaho Beer Tax Administrative Rules	
<u>35-0112-1702</u>	Idaho Beer Tax Administrative Rules	
<u>35-0201-1701</u>	Tax Commission Administration and Enforcement Rules	
<u>35-0201-1703</u>	Tax Commission Administration and Enforcement Rules	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson	Sen Vick
Vice Chairman Bayer	Sen Patrick
Sen Hill	Sen Burgoyne
Sen Siddoway	Sen Nye
Sen Rice	

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 18, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 335 **Relating to Employment Security Law. Melinda Smyser**, Director, Idaho Department of Labor (IDOL), presented **H 335**. **Director Smyser** stated this legislation will reduce the unemployment insurance taxes paid by businesses by \$115 million over three years, while maintaining the solvency of the unemployment reserve fund. **H 335** will amend Idaho Code § 72-1350 by adjusting the unemployment fund size multiplier from 1.5 to 1.3, and will make this change retroactive to January 1, 2018. **Director Smyser** reported no fiscal impact to the General Fund but estimated additional costs to the IDOL relating to implementation. She stated that passage of **H 335** by February 28, 2018, will prevent the need for the IDOL to issue employer unemployment insurance tax credits for payments made during the first quarter of 2018.

Senator Hill asked for clarification regarding proposed language in Idaho Code § 72-1350(2). **Director Smyser** asked Salvador Vasquez, Labor Market Information Director for IDOL, to respond. **Mr. Vasquez** explained that this section will change the effective date to January 1, 2018, to allow the IDOL to make retroactive changes and re-issue new tax notices.

Senator Nye asked why the fund size multiplier will be reduced to 1.3. **Mr. Vasquez** stated that current law mandates a multiplier of 1.5 for the fund to remain solvent; however, the fund is solvent at a multiplier of 1.3 and able to maintain a balance that is sufficient to sustain any potential recession.

TESTIMONY: The following individuals spoke in support of H 335: **John Eaton**, Idaho Association of Commerce and Industry; **John Watts**, Idaho Chamber Alliance; and **Suzanne Budge**, National Federation of Independent Business.

MOTION: **Senator Burgoyne** moved to send **H 335** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion.

CONFLICT OF INTEREST: Pursuant to Senate Rule 39(H), **Senator Patrick** disclosed a possible conflict of interest under applicable law.

The motion carried by **voice vote**.

RS 25679 **Relating to Distribution of Sales Tax Revenue.** **Doreen Warren**, Public Information Director, Idaho State Tax Commission (Commission), presented **RS 25679**. This legislation will amend Idaho Code § 63-3638 to clarify the established process for the Commission to distribute sales tax revenue. **Ms. Warren** stated these changes are procedural in nature and will have no fiscal impact on state revenue.

MOTION: **Senator Siddoway** moved to print **RS 25679**. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

DOCKET NO. 35-0101-1701 **Income Tax Administrative Rules.** **Cynthia Adrian**, Tax Policy Specialist with the Commission, presented this pending rule docket. She stated this was non-negotiated rulemaking required by statute.

The proposed change to Section 075 relates to tax on individuals, estates, and trusts and will update tax brackets for calendar year 2017.

The proposed change to Section 263 will adjust the amount of guaranteed payments that are sourced as compensation for services for tax year 2017. **Ms. Adrian** explained how the guaranteed payment is calculated and that the amount is rounded to the nearest hundred.

The proposed changes to Section 771 will cap the grocery tax credit at \$100 for tax year 2015 and beyond. **Ms. Adrian** indicated this inclusive language will preclude the need to revisit this rule annually.

MOTION: **Chairman Johnson** moved to approve **Docket No. 35-0101-1701**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0109-1701 **Idaho County Option Kitchen and Table Wine Tax Administrative Rules.** **Ms. Adrian** explained that the Commission is proposing that Section 017 be stricken and selected provisions be introduced in Section 003, Administrative Appeals, and Section 006, Incorporation by Reference. She noted that these changes align with rulemaking requirements set forth by the Idaho Department of Administration.

Senator Hill asked for more information regarding the wine tax and the estimated number of counties that utilize this tax. **Ms. Adrian** explained this tax is a state and county option tax, and that she would provide the data requested.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 35-0109-1701**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0109-1702 **Idaho County Option Kitchen and Table Wine Tax Administrative Rules.** **Ms. Adrian** stated these pending rules were negotiated rulemaking.

Section 011 describes when dispositions of wine are subject to the wine tax. **Ms. Adrian** stated the proposed rule change will require a winery to maintain records of taxes paid on supplemental inventory purchased from a distributor. Without adequate record of taxes paid, the Commission may apply the wine tax to these purchases.

Section 015 pertains to wine tax permit reporting. **Ms. Adrian** explained the Commission currently has no mechanism to cancel wine tax permits. The proposed rule change will allow the Commission to cancel a permit that has been inactive for 12 consecutive months after providing written notice to the permit holder.

Senator Burgoyne asked how the Commission defines "not actively engaged" in Subsection 15.03. **Ms. Adrian** replied that the Commission considers a winery not actively engaged in activities requiring a wine tax permit if it does not report activity for 12 months. A permit will not be canceled if a winery contacts the Commission prior to 12 months of inactivity.

Senator Vick inquired what prompted the proposed changes to Section 011. **Ms. Adrian** explained the intent is to provide clarity for wineries regarding the application of wine tax to supplemental inventory.

Chairman Johnson asked who participated in negotiated rulemaking. **Ms. Adrian** reported that Roger Batt, Idaho Grape Growers and Wine Producers, participated and supported the proposals.

Senator Siddoway asked for clarification regarding reference to four percent alcohol by weight in Section 011. **Ms. Adrian** reported that the percentage has been four percent, but it was never specified in statute.

Vice Chairman Bayer asked for an estimation of how many permits are canceled due to inactivity. **Ms. Adrian** reported that very few of the approximately 150 issued permits had been canceled.

Senator Nye asked for clarification regarding the use of the word "may" in Subsection 15.03, and how the Commission notifies permit holders prior to cancellation. **Ms. Adrian** stated the Commission sends two letters to a permit holder prior to cancellation if the permit is not active for 12 months. The Commission will not cancel a permit prior to 12 months.

MOTION: **Senator Vick** moved to approve **Docket No. 35-0109-1702**. **Senator Rice** seconded the motion.

SUBSTITUTE MOTION: **Senator Nye** moved to approve **Docket No. 35-0109-1702** with the exception of Subsection 15.03. The motion failed due to lack of a second.

VOTE ON ORIGINAL MOTION: The motion carried by **voice vote**.

DOCKET NO. 35-0110-1701 **Idaho Cigarette and Tobacco Products Tax Administrative Rules.** **Ms. Adrian** presented proposed changes to Section 006, which will add income tax administration and enforcement statutes and related rules adopted in Idaho Code §§ 63-2516 and 63-2563.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 35-0110-1701**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0112-1701 **Idaho Beer Tax Administrative Rules.** **Ms. Adrian** stated these rules are not reviewed annually and are not negotiated rulemaking. The Commission is proposing that Section 014 be stricken and selected provisions be introduced in Section 003, Administrative Appeals, and Section 006, Incorporation by Reference. **Senator Siddoway** asked if this applies only to beer brewed in Idaho. **Ms. Adrian** affirmed.

MOTION: **Senator Rice** moved to approve **Docket No. 35-0112-1701**. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0112-1702 **Idaho Beer Tax Administrative Rules.** **Ms. Adrian** presented the proposed change to Section 011, which describes when dispositions of beer are subject to the beer tax. The proposal will require a brewery to maintain records of taxes paid on supplemental inventory purchased from a distributor. Without adequate record of taxes paid, these purchases are subject to the beer tax.

Section 016 pertains to beer tax permit reporting. **Ms. Adrian** stated the proposed rule change will allow the Commission to cancel a permit that has been inactive for 12 consecutive months after providing written notice to the permit holder.

MOTION: **Senator Vick** moved to approve **Docket No. 35-0112-1702**. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1701 **Tax Commission Administration and Enforcement Rules.** **Ms. Adrian** explained that Sections 326, 327, and 328 are being amended consistent with 2017 HB 23 and 24 regarding the appeals process. Definitions will be added and procedures will be established that specify permitted communications between the appeals unit, originating division, and others during the appeals process. **Ms. Adrian** noted that the proposal will include notification requirements to ensure that a petitioner has advance notice of communication between the appeals unit and originating division regarding his/her case.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 35-0201-1701**. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1703 **Tax Commission Administration and Enforcement Rules.** **Ms. Adrian** presented the proposed changes to Section 310, which will update the interest rate for calendar year 2018 and the Revenue Ruling where the federal rate for the calculation can be found.

MOTION: **Senator Hill** moved to approve **Docket No. 35-0201-1703**. **Senator Nye** seconded the motion.

Senator Vick asked how the interest rate is determined, and **Ms. Adrian** provided the calculation.

The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 3:55 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 24, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25873</u>	Relating to Delinquent Property Taxes, Payment	Kelli Brassfield, Idaho Association of Counties
<u>RS25874</u>	Relating to Delinquent Property Taxes, Assessment	Kelli Brassfield
<u>S 1220</u>	Relating to the Distribution of Sales Tax Revenue	Tom Shaner, Idaho State Tax Commission
Docket No.	RULES REVIEW	
<u>35-0103-1704</u>	Property Tax Administrative Rules	Alan Dornfest, Idaho State Tax Commission

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 24, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: Senator Hill

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

RS 25873 **Relating to Delinquent Property Taxes. Kelli Brassfield**, Idaho Association of Counties, presented **RS 25873**. Idaho Code § 63-1002(2) states that delinquent tax payments may be paid and accepted upon the oldest delinquency. **Ms. Brassfield** noted that some counties have interpreted the statute to say the taxpayer can decide in which year of delinquency to apply payment. This legislation would replace "may" with "shall" to require delinquent tax payments be paid upon the oldest delinquency.

MOTION: **Senator Siddoway** moved to print **RS 25873**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

RS 25874 **Relating to Delinquent Property Taxes. Ms. Brassfield** presented **RS 25874**. **Ms. Brassfield** stated current statute is unclear as to when late charges and interest are applied to missed and supplemental property rolls. This legislation will specify that interest for supplemental and missed property taxes will be applied from January 1 of the current year.

MOTION: **Senator Burgoyne** moved to print **RS 25874**. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

S 1220 **Relating to the Distribution of Sales Tax Revenue. Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented **S 1220**. Idaho Code § 63-3638 governs the distribution of sales tax revenues. **Mr. Shaner** explained that the passage of legislation over the years has made this code section difficult to read. **S 1220** will clarify the established process for distributing sales tax revenues. There are no substantive changes to the statute and no fiscal impact on state revenue.

MOTION: **Senator Siddoway** moved to send **S 1220** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

DOCKET NO. 35-0103-1704 **Property Tax Administrative Rules. Alan Dornfest**, Property Tax Policy Bureau Chief with the Commission, presented this pending rule docket.

The proposed changes to Section 314 will grant county assessors additional flexibility to use aerial maps and other digital imaging technology tools to supplement, but not replace, physical site inspections. **Mr. Dornfest** stated national standards outlined in the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal of Real Property suggests the use of such technology when available and practical. Idaho Code § 21-213 prohibits a person, entity, or state agency from using a drone or other unmanned aircraft systems to photograph or electronically record specifically targeted private property without a warrant. **Mr. Dornfest** stated that county assessors are not permitted to use drones when conducting site inspections.

Senator Vick asked Mr. Dornfest to explain the catalyst for changes to Section 314. **Mr. Dornfest** stated digital imagery is meant to supplement, rather than replace, standard appraisal methodology. The Commission's intent is to provide general guidance for assessors using this technology.

The proposed change to Section 404 pertains to reports submitted to the Commission annually by operating properties. The proposed change will extend the filing date for the portion of the operator's statement that is specific to tax code area information. **Mr. Dornfest** stated that companies will no longer be granted automatic extensions of the April 30 deadline for the entire operator's statement if the Commission fails to submit changes in tax code area boundary lines by March 1. The extension will apply only to geographic information and excludes all other sections unaffected by map changes. **Mr. Dornfest** reported that positive feedback was received from public utility companies during negotiated rulemaking.

Senator Patrick asked for clarification regarding annual reporting requirements. **Mr. Dornfest** explained how the value of operating property is apportioned. He provided the example that as the boundaries of taxing districts change due to annexation, the amount of operating property within that taxing district may also change. The Commission must identify how much operating property exists within a taxing district and apportion the value appropriately.

Mr. Dornfest stated Section 612 is being amended consistent with 2017 HB 156. Criteria will be added for assessors to utilize when determining if a park model recreational vehicle is subject to property tax. **Mr. Dornfest** explained that if the determination is made that a park model is permanently attached to a foundation, has an attached building addition, or has been substantially modified, the vehicle is subject to property tax and cannot be licensed. Additionally, he indicated that associated property may be taxable, and subject to the homeowner's exemption, regardless of whether the vehicle is exempt from property tax. **Mr. Dornfest** noted that the Commission received favorable input from the Idaho Housing Alliance and various counties during negotiated rulemaking.

Section 631 is being amended consistent with 2017 HB 235, which lowered the qualifying investment threshold from \$3 million to \$500,000 at the discretion of county commissions. **Mr. Dornfest** stated that examples will be updated to reflect changes to Idaho Code § 63-602NN to explain the base value - the value during the year immediately preceding the first year of the exemption. Ordinance procedures will also be updated to reflect the lowered qualifying investment threshold. **Mr. Dornfest** reported that the Commission worked with county commissioners and assessors during negotiated rulemaking.

There are two proposed changes to Section 803. The first change will allow taxing districts to disclaim forgone balances for the previous year only. **Mr. Dornfest** reported that examples will be included to provide clarity for taxing districts and counties on how to determine the maximum forgone amount they may disclaim for 2018. The second change will remove requirements related to county property tax relief related to local sales tax. **Mr. Dornfest** explained that the local sales tax option program has expired and counties no longer collect these funds.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 35-0103-1704**. **Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 3:38 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, January 25, 2018

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Kenneth Nuhn of Moscow, Idaho was appointed to the Board of Tax Appeals to serve a term commencing August 23, 2017 and expiring June 30, 2020.	Kenneth Nuhn
<u>S 1215</u>	Relating to Fire Protection District Elections	Chairman Johnson
<u>S 1216</u>	Relating to Compensation of Fire Protection District Commissioners	Brent Adamson, Idaho State Fire Commissioners' Association Rudy Rudebaugh, Idaho State Fire Commissioners' Association

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
 Vice Chairman Bayer
 Sen Hill
 Sen Siddoway
 Sen Rice

Sen Vick
 Sen Patrick
 Sen Burgoyne
 Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
 Room: WW50
 Phone: 332-1315
 email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 25, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:02 p.m.

GUBERNATORIAL APPOINTMENT: **Chairman Johnson** welcomed Steve Wallace, Director, Board of Tax Appeals (Board), to the podium. **Mr. Wallace** introduced the current Board members and noted that they serve rotating three-year terms. He reported that the Board functions independently from the State Tax Commission and Idaho counties to process tax appeals and contested case proceedings statewide.

Chairman Johnson welcomed Kenneth Nuhn to the podium. **Mr. Nuhn** provided a brief history of his personal and professional experiences. He then stood for questions.

Senator Siddoway asked Mr. Nuhn to describe how his political affiliations have changed over time. **Mr. Nuhn** stated that as a young man, he was a registered Democrat. He changed his affiliation to Republican for many years later in life. He is currently unaffiliated with any political party. **Senator Siddoway** then asked if Mr. Nuhn had attended any Board hearings since his nomination. **Mr. Nuhn** stated that he has worked with hearing officers and attended hearings across the State.

Senator Burgoyne stated that political affiliation is a relevant statutory consideration of this position. He asked Mr. Nuhn a series of questions regarding his political affiliation. **Mr. Nuhn** responded that he became unaffiliated two years ago, but prior to that time, he had been a registered Republican for approximately 15 years. **Senator Burgoyne** then asked Mr. Nuhn questions regarding his experience with, and knowledge of, Idaho tax law. **Mr. Nuhn** stated that even though he has no formal education pertaining to tax law, he has many years instructing college-level courses in general business, real estate, and appraisal. In addition, his professional experience as an appraiser has provided him with a general background in taxation and assessment. **Senator Burgoyne** expressed concern that there is currently no attorney serving on the Board, but he welcomed further discussion with Mr. Nuhn regarding his qualifications for this position.

Chairman Johnson asked that Mr. Nuhn provide any additional biographical information to Committee Secretary, Jennifer Carr.

S 1215 **Relating to Fire Protection District Elections.** Brent Adamson, Commissioner, Idaho City Fire Protection District, presented **S 1215**. Commissioner Adamson stated that this legislation will remove language regarding the election notification process of fire protection districts. It will bring the process into compliance with Idaho Code § 34-1406. Fire protection districts will be required to provide notification 12 and 5 days prior to an election; current statute requires notification 30 days prior to an election.

Senator Hill asked why the code referenced in the bill did not align with the Statement of Purpose (SOP). It was determined that the code referenced in the SOP is incorrect and will be corrected prior to sending the bill to the floor.

MOTION: **Senator Hill** moved to send **S 1215** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

S 1216 **Relating to Compensation of Fire Protection District Commissioners.** David "Rudy" Rudebaugh, Commissioner, Timberlake Fire District, presented **S 1216**. This legislation will provide an increase to the daily compensation for fire protection district commissioners; it will align such compensation with other taxing entities. This legislation will also provide special compensation for commissioners during an emergency or disaster. **Commissioner Rudebaugh** reported a fiscal impact on fire protection districts only if the proposal is approved by a board of commissioners during annual budget appropriations. Compensation for an emergency or a disaster requires a board to set compensation limits. Such considerations apply only during the rare instances of an emergency or disaster declaration.

MOTION: **Senator Siddoway** moved to send **S 1216** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 3:45 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AMENDED AGENDA #2
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, January 30, 2018

SUBJECT	DESCRIPTION	PRESENTER
Vote on Gubernatorial Appointment	Kenneth Nuhn of Moscow, Idaho was appointed to the Board of Tax Appeals to serve a term commencing August 23, 2017 and expiring June 30, 2020.	
Minutes Approval	Minutes from January 16, 2018, 8:30 a.m.	Senators Vick and Burgoyne
	Minutes from January 16, 2018, 3:00 p.m.	Vice Chairman Bayer and Senator Rice
<u>RS25828</u>	Relating to the Incentive Income Tax Investment Credit	Chairman Johnson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 30, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: Senators Hill, Siddoway, and Rice

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

GUBERNATORIAL APPOINTMENT: **Senator Vick** moved to send the Gubernatorial appointment of Kenneth Nuhn to the Board of Tax Appeals to the floor with a recommendation that he be confirmed by the Senate. **Senator Nye** seconded the motion.

Senator Burgoyne stated that he will not support the motion. He recognized Mr. Nuhn's professional record, but felt he does not have the experience or expertise required for this position.

The motion carried by **voice vote**. **Senator Burgoyne** requested that he be recorded as voting **nay**.

MINUTES APPROVAL: **Senator Vick** moved to approve the Minutes of January 16, 2018, 8:30 a.m. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

Due to scheduling considerations, **Vice Chairman Bayer** deferred discussion of the Minutes of January 16, 2018, 3:00 p.m. until a later date.

RS 25828 **Relating to the Incentive Income Tax Investment Credit. Chairman Johnson** presented **RS 25828**. This legislation will repeal Idaho Code § 63-3029J, relating to the incentive income tax investment credit. The statute limits the credit to tax year 2001 only and allows excess amounts to be carried forward for a period not to exceed the next 14 taxable years. The provision expired in 2015 and is now obsolete.

MOTION: **Senator Burgoyne** moved to print **RS 25828**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman** adjourned the meeting at 3:08 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, January 31, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 355</u>	Relating to the Internal Revenue Code, 2017 Conformity	Tom Shaner, Idaho State Tax Commission
<u>H 381</u>	Relating to Income Tax, Charitable Contribution	Tom Shaner
<u>H 382</u>	Relating to Income Tax, Notification Time	Tom Shaner
<u>H 384</u>	Relating to Income Tax, Adjustments	Tom Shaner
<u>H 383</u>	Relating to Cigarette and Tobacco Product Taxes	Cynthia Adrian, Idaho State Tax Commission
<u>S 1230</u>	Relating to Property Taxes, Delinquency	Donna Peterson, Payette County Treasurer
<u>S 1231</u>	Relating to Property Taxes, Late Charges	Donna Peterson
Minutes Approval	Minutes from January 17, 2018	Senators Hill and Siddoway

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 31, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 355 **Relating to the Internal Revenue Code, 2017 Conformity.** **Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented **H 355**. This legislation will conform Idaho income tax code to the Internal Revenue Code (I.R.C.). **Mr. Shaner** stated that Idaho is currently aligned with the I.R.C. as of January 1, 2017. **H 355** will change that date to December 21, 2017, prior to the enactment of the Tax Cuts and Jobs Act, with the exception of two provisions.

The first provision will lower the threshold for itemized medical expenses from 10 percent to 7.5 percent of federal adjusted gross income. The second provision will require foreign subsidiaries to report and pay tax on previously unreported foreign earnings. **Mr. Shaner** stated that, historically, corporations have been able to report foreign earnings incrementally over time. Under the new provision, those corporations will not be required to report those earnings a second time. **Mr. Shaner** then explained how federal and state tax would be applied to corporations that have not previously reported foreign earnings.

Senator Hill sought clarification regarding I.R.C. §§ 213 and 965. **Mr. Shaner** stated that Section 213 pertains to itemized medical expense deductions. Section 965 is a new code section that pertains to the transition tax on unreported foreign earnings of foreign subsidiaries. **Senator Hill** asked what section of Idaho Code references the treatment of foreign earnings by the State. **Mr. Shaner** said he would provide that information to the Committee.

Senator Burgoyne asked Mr. Shaner to provide an estimate of the fiscal impact of I.R.C. § 965. **Mr. Shaner** outlined the difficulties of estimating fiscal impact without examining each of the approximately 8,000 multi-state income tax returns filed in Idaho.

DISCUSSION: A discussion ensued regarding the application of I.R.C. § 965 to Idaho taxpayers.

Senator Burgoyne asked if language could be incorporated to prevent a retroactive tax increase. **Mr. Shaner** affirmed, but stated policy decisions require legislative action.

Senator Rice asked Mr. Shaner to clarify how taxes on foreign income are administered by the State. **Mr. Shaner** stated that treatment of foreign dividends is defined in statute and dependent on how a corporation files its Idaho income tax return. Many corporations pay taxes incrementally on foreign earnings over time. **Senator Rice** commented that only corporations that have unreported foreign income will pay tax under this provision; there will be no subsequent tax increase or double taxation issue.

Senator Burgoyne asked if Idaho's treatment of foreign earnings is more or less beneficial than that of the federal government under the Tax Cut and Jobs Act. **Mr. Shaner** commented that Idaho's treatment of foreign dividends is consistent with uniform models of multi-state tax application. The intention of repatriation is to encourage multinational corporations to bring profits back to the United States. **Senator Burgoyne** asked if this provision has prospective application. **Mr. Shaner** replied this is a one-time, transition tax.

Senator Hill clarified that the Tax Cuts and Jobs Act will provide a tax deduction for multinational corporations on previously unreported foreign earnings for tax year 2017. Those foreign earnings will be deemed repatriated and tax will not be applied again in subsequent tax years.

Senator Burgoyne asked how non-conformity to I.R.C. § 965 would affect Idaho. **Mr. Shaner** reported additional processing costs and challenges resulting from non-conformity, including the identification of unreported earnings of foreign subsidiaries for subsequent tax years.

Senator Vick asked for clarification regarding the proposed conformity date of December 21, 2017. **Mr. Shaner** stated the date was chosen to address I.R.C. §§ 965 and 213 separately because these provisions are retroactive and will affect Idaho tax preparation for tax year 2017.

Senator Hill provided clarity on the issue of conformity. He stated that, regardless of changes in tax law at the federal level, Idaho must decide on conformity for tax year 2017. When federal tax reform was passed, there were only two retroactive provisions that affected tax year 2017 - I.R.C. §§ 965 and 213. The remaining provisions apply to tax year 2018, and conformity to those provisions will be considered by the Legislature at a later date.

MOTION: **Senator Hill** moved to send **H 355** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 381 **Relating to Income Tax, Charitable Contribution.** **Mr. Shaner** presented **H 381**. This legislation will amend Idaho Code § 63-3022U, which pertains to deductions of charitable contributions by nonresidents. **Mr. Shaner** reported that this statute currently references Idaho Code § 63-3026A(4) for nonresidents to calculate these deductions. The correct code reference should be Idaho Code § 63-3026A(6). **H 381** will make this technical correction. The correction will have no impact on state revenue.

MOTION: **Vice Chairman Bayer** moved to send **H 381** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 382 **Relating to Income Tax, Notification Time.** **Mr. Shaner** presented **H 382**. Idaho Code § 63-3069 requires taxpayers to report changes in federal taxable income, or in tax paid to another state, to the Commission within 60 days. **H 382** will extend the reporting deadline from 60 to 120 days and will provide for a penalty in the case of a violation. **Mr. Shaner** stated the deadline extension will provide taxpayers and tax professionals with additional time to file amended returns.

MOTION: **Senator Vick** moved to send **H 382** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

H 384 **Relating to Income Tax Adjustments.** **Mr. Shaner** presented **H 384**. Idaho's income tax code conforms annually to the I.R.C. with the exception of Bonus Depreciation rules and Net Operating Loss (NOL) provisions. Idaho Code § 63-3022O requires Idaho taxpayers to add back the federal bonus depreciation deduction to their Idaho income tax return. **Mr. Shaner** explained that current statute prohibits taxpayers from using net operating losses, Idaho credits, and capital loss carryovers that are more than three years old. **H 384** will extend the use of such credits or carryovers beyond the three-year statute of limitations to mitigate a tax increase related to a bonus depreciation adjustment.

MOTION: **Senator Siddoway** moved to send **H 384** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 383 **Relating to Cigarette and Tobacco Product Taxes.** **Cynthia Adrian**, Tax Policy Specialist with the Commission, presented **H 383**. **Ms. Adrian** stated that Idaho Code §§ 63-2516 and 63-2563 pertain to the collection and enforcement statutes for cigarette and tobacco products. **H 383** will add a provision detailing a taxpayer's right to appeal an audit to both statutes. The appeal provision is in Idaho Code § 63-3045B and **H 383** will add mention of that statute to the provisions. In addition, this legislation will condense lengthy lists of statutes into a statutory range. **Ms. Adrian** felt this would improve readability.

Senator Hill asked why certain code sections were omitted. **Ms. Adrian** was unsure, but stated she would review the specific code sections for relevancy. **Senator Burgoyne** commented on the precision of listing relevant statutes individually. He felt that such practice leaves no uncertainty about what is incorporated. **Senator Hill** recommended that the Committee postpone further consideration of **H 383** to ensure that appropriate code sections are referenced.

S 1230 **Relating to Property Tax Delinquencies.** **Donna Peterson**, Treasurer, Payette County, presented **S 1230**. Idaho Code § 63-1002(2) states delinquent tax payments may only be paid and accepted upon the oldest delinquency. This legislation will replace "may" with "shall" to require delinquent tax payments be paid upon the oldest delinquency. **Ms. Peterson** stated this will prevent taxpayers from choosing in which year of delinquency to apply payment.

Senator Siddoway asked Ms. Peterson to explain the tax implications of applying payment to a year other than the oldest delinquency. **Ms. Peterson** stated that paying only the most recent delinquency will not relieve the taxpayer of remaining tax obligations.

Senator Patrick asked how delinquent property taxes affect the sale of property. **Ms. Peterson** explained that current law grants counties the authority to place a lien on a property if tax payments are delinquent for three or more years.

MOTION: **Senator Patrick** moved to send **S 1230** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

S 1231 **Relating to Property Taxes, Late Charges.** **Ms. Peterson** presented **S 1231**. This legislation proposes to amend Idaho Code § 63-903 to specify that interest for subsequent and missed property taxes will be applied from January 1 of the subsequent year. **Ms. Peterson** stated that the current statute is unclear as to when to apply interest. Some county treasurers begin applying interest the day after a property tax payment is considered delinquent. This legislation will provide consistency for county treasurers and Idaho taxpayers.

Senator Siddoway asked for clarification regarding the application of interest to annual property tax payments. **Ms. Peterson** explained that interest is applied to delinquent property tax payments beginning January 1st of the subsequent year for the prior year's taxes. The intention of **S 1231** is to align the assessment of interest on subsequent and missed property bills in the same manner.

Senator Vick asked Ms. Peterson to explain the fiscal note. **Ms. Peterson** replied that approximately 90 percent of Idaho counties already begin collecting interest on January 1st. The fiscal impact will be relatively small when the remaining counties conform to this provision. **Senator Vick** felt that this should be noted in the fiscal note.

Senator Burgoyne asked if this amendment will create a circumstance where a taxpayer will pay interest for a period of time in which they were not delinquent. **Ms. Peterson** stated that, for subsequent and missed property rolls, the majority of county treasurers assess interest as of January 1st. The small percentage of taxpayers that are not currently assessed in this manner will pay more interest under this provision. **Ms. Peterson** stated this will create consistent application of tax for county treasurers statewide. Taxpayers will not pay interest for a period of time in which they were not delinquent.

Vice Chairman Bayer asked Ms. Peterson to adjust the fiscal note to reflect the potential impact at the county level.

MOTION: **Vice Chairman Bayer** moved to send **S 1231** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Hill** moved to approve the Minutes of January 17, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 383 **Chairman Johnson** asked Ms. Adrian to return to the podium to address concerns regarding statutes referenced in **H 383**. **Ms. Adrian** reviewed four statutes in question - Idaho Code §§ 63-3041, 63-3045B, 63-3046A, and 63-3046B. She reviewed the subject matter of these statutes and felt they are relevant to the proposed legislation.

MOTION: **Senator Hill** moved to send **H 383** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion.

The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:08 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, February 01, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 390</u>	Relating to Property Taxes, Mailing Requirement	Alan Dornfest, Idaho State Tax Commission
<u>H 391</u>	Relating to the State Tax Commission, Reporting Date	Alan Dornfest
<u>H 392</u>	Relating to Energy Taxes, Notification Dates	Alan Dornfest
Minutes Approval	Minutes from January 16, 2018	Senator Rice Vice Chairman Bayer
	Minutes from January 18, 2018	Vice Chairman Bayer Senator Nye
	Minutes from January 24, 2018	Senator Patrick Senator Burgoyne

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
 Vice Chairman Bayer
 Sen Hill
 Sen Siddoway
 Sen Rice

Sen Vick
 Sen Patrick
 Sen Burgoyne
 Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
 Room: WW50
 Phone: 332-1315
 email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, February 01, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 390 **Relating to Property Taxes, Mailing Requirement. Alan Dornfest**, Property Tax Policy Bureau Chief, Idaho State Tax Commission (Commission), presented **H 390**. This legislation proposes to amend Idaho Code § 63-509 by removing the requirement that county auditors deliver abstracts of property tax rolls to the Commission via certified mail. **Mr. Dornfest** indicated that county auditors use electronic and regular mail services to deliver these documents.

MOTION: **Senator Hill** moved that **H 390** be placed on the Consent Calendar. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 391 **Relating to the State Tax Commission, Reporting Date. Mr. Dornfest** presented **H 391**. Idaho Code § 63-105A allows the Commission to correct errors in its assessment of operating property by the first Monday in November. **Mr. Dornfest** stated this legislation will change that date to the third Monday in October to provide counties more time to correct errors and calculate tax levies. This is a technical correction and will have no fiscal impact on state revenue.

MOTION: **Senator Siddoway** moved that **H 391** be placed on the Consent Calendar. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 392 **Relating to Energy Taxes, Notification Dates. Mr. Dornfest** presented **H 392**, which will eliminate several conflicts between Idaho Code § 63-803 and Chapter 35, Title 63, Idaho Code. These conflicts pertain to dates by which certain tax amounts are calculated and reported. This legislation will make the following amendments to Idaho Code: 1.) to require the Commission to notify counties and the Superintendent of Public Instruction of tax amounts due from alternative energy producers by the third Monday in May; 2.) to require counties to notify affected taxing districts by the first Monday in August; and 3.) to require reporting of the amount of solar energy tax distributed during the 12 months, ending June 30th, to each taxing district by the first Monday in August. **Mr. Dornfest** stated the proposed changes are technical in nature and will not affect taxpayers or State revenue.

MOTION: **Senator Rice** moved that **H 392** be placed on the Consent Calendar. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Rice** moved to approve the Minutes of January 16, 2018. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Bayer moved to approve the Minutes of January 18, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

Senator Patrick moved to approve the corrected Minutes of January 24, 2018.
Senator Burgoyne seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 3:15 p.m.

Senator Johnson
Chair

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, February 06, 2018

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Janet Moyle of Idaho Falls, Idaho was appointed to the State Tax Commission to serve a term commencing December 6, 2017 and expiring April 1, 2023.	Janet Moyle

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, February 06, 2018
TIME: 3:00 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Patrick, Burgoyne, and Nye
ABSENT/ EXCUSED: Senator Vick
NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:03 p.m.
GUBERNATORIAL APPOINTMENT: **Janet Moyle of Idaho Falls, Idaho was appointed to the State Tax Commission to serve a term commencing December 6, 2017 and expiring April 1, 2023.**

Chairman Johnson welcomed Commissioner Moyle to the podium. **Commissioner Moyle** provided a brief history of her personal and professional experiences. She commented on the opportunities and challenges of federal tax reform and noted she felt privileged to serve on the Idaho State Tax Commission (Commission) during this time of transition. Commissioner Moyle then stood for questions.

Senator Hill addressed potential conflicts of interest stemming from her marriage to Representative Mike Moyle. He asked how she will prevent undue influence or sharing of privileged information. **Commissioner Moyle** acknowledged the uniqueness of her position in this regard. She highlighted her service as a county appraiser and Legislator, and her ability to handle confidential information in the performance of those duties. **Commissioner Moyle** stated that she will demonstrate the same level of integrity in her new position.

Chairman Johnson expressed concern about conflicts of interest relating to the separation of powers between the executive and legislative branches. He asked Commissioner Moyle how she is adapting to her new position in the context of her spousal relationship. **Commissioner Moyle** responded she and her husband demonstrate professional integrity and she has not been asked to cross an ethical line. She addressed concerns regarding the separation of powers by stating that as a commissioner, she will administer tax law as written in statute; policy decisions are made by the Legislature.

Senator Burgoyne expressed his opinion that there is no legal conflict with Commissioner Moyle's appointment, but he suggested a practical conflict may exist. He asked for assurance from Commissioner Moyle that her decisions as an administrator will not be influenced by her spouse, whose views on tax policy are public and well-known. **Commissioner Moyle** acknowledged that her husband is a vocal public figure but stated that her decisions and actions will not be influenced by his views. She will base her decisions on the administration of tax policy as created by the Legislature.

Chairman Johnson asked if she was considered for this appointment because of her husband's position as House Majority Leader. **Commissioner Moyle** felt the vetting process was thorough and that her appointment was based upon 17 years of experience as an appraiser and her service as a Legislator.

Senator Hill asked if Commissioner Moyle was aware of any discussions between Governor Otter and Representative Moyle regarding her appointment. **Commissioner Moyle** stated she is unaware of such communications.

Senator Burgoyne expressed concern that Commissioner Moyle's decisions may be overly scrutinized because of her husband's position. **Commissioner Moyle** acknowledged the level of trust that is required of her in this regard. She stated that policy decisions are made by the Legislature and it will be her responsibility as a tax commissioner to administer those policies. **Senator Burgoyne** commented that the Commission often seeks to codify common practice into law; this suggests the Commission has the practical ability to influence policymaking. He sees potential conflict in this regard and asked Commissioner Moyle to respond. **Commissioner Moyle** replied that she is one of four tax commissioners; each hold one another accountable in the course of their duties.

Chairman Johnson indicated the confirmation vote on Commissioner Moyle's appointment will occur the following week.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 3:35 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 07, 2018

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Timber Land Valuation	Steve Fiscus, Idaho State Tax Commission
<u>S 1253</u>	Relating to the Incentive Income Tax Investment Credit	Chairman Johnson
Minutes Approval	Minutes of January 25, 2018.	Senators Vick and Nye
	Minutes of January 30, 2018.	Senators Vick and Nye

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, February 07, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:03 p.m.

PRESENTATION: Timber Land Valuation. Steve Fiscus, Property Tax Division Administrator, Idaho State Tax Commission (Commission), presented information on the taxation of timber land in Idaho. **Mr. Fiscus** provided a brief legislative history of forest land taxation. He explained that Chapter 17 was added to Title 63, Idaho Code, in 1982 to provide statutory guidance for the taxation of forest lands. Idaho Code § 63-1705 created a timber land valuation formula; **Mr. Fiscus** explained how this formula is derived. He provided information on forest valuation zones, productivity classifications within these zones, and how site productivity is measured. **Mr. Fiscus** also discussed trends in forest land values over the last three decades. The passage of legislation in 2012 maintained the floor and ceiling of forest land values at the 2011 valuation level to avoid continued fluctuations. **Mr. Fiscus** indicated that the Committee on Forest Land Taxation Methodologies (CFTM) will need to revise current methodologies prior to 2022.

Senator Patrick commented that imported lumber may result in decreased sales and timber values in Idaho. **Mr. Fiscus** agreed and explained that timber exportation also affects values; both of these factors affect stumpage values, which is a component of the timber productivity valuation.

Chairman Johnson asked Mr. Fiscus to explain the relationship between the Commission and county assessors, as it relates to the valuation process. **Mr. Fiscus** stated that the Commission calculates values for the subsequent year and disseminates the information to county assessors. He also highlighted the unique role of the Commission to provide training, education and support to county governments and industry, and to administer and enforce tax policy.

Senator Siddoway asked if an agreement was made with the timber industry to provide subsequent tax relief if they paid a higher tax rate when land values fell below zero. **Mr. Fiscus** stated this is an example of industry paying tax on a value that was assessed below zero for many years. During the recent economic recovery, when values increased, they paid less tax per acre than they would otherwise.

PASSED THE GAVEL: Chairman Johnson passed the gavel to Vice Chairman Bayer.

S 1253 **Relating to the Incentive Income Tax Investment Credit.** **Chairman Johnson** presented **S 1253**, which proposes to repeal of Idaho Code § 63-3029J. He explained that this code section was created in response to the terrorist attacks of September 11, 2001, and limited the provision to the next 14 taxable years. This statute expired in 2015 and is now obsolete.

MOTION: **Senator Nye** moved to send **S 1253** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

MINUTES
APPROVAL: **Senator Vick** moved to approve the Minutes of January 25, 2018. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

Senator Nye moved to approve the Minutes of January 30, 2018. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 3:40 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, February 13, 2018

SUBJECT	DESCRIPTION	PRESENTER
Vote on Gubernatorial Appointment	Janet Moyle of Idaho Falls, Idaho was appointed to the State Tax Commission to serve a term commencing December 6, 2017 and expiring April 1, 2023.	
<u>H 451</u>	Relating to tax credits for charitable contributions made to medical residency programs.	Representative Erpelding

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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Phone: 332-1315
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, February 13, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: Senators Siddoway and Rice

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Hill** moved to send the Gubernatorial appointment of Janet Moyle to the State Tax Commission to the floor with a recommendation that she be confirmed by the Senate. **Senator Patrick** seconded the motion. The motion passed by **voice vote**. **Senator Burgoyne** requested that he be recorded as voting **nay**.

H 451 **Relating to tax credits for charitable contributions made to medical residency programs.** **Representative Erpelding** presented **H 451**. This legislation proposes amendment to Idaho Code § 63-3029A, relating to income tax credits for charitable contributions. **Representative Erpelding** explained that Idaho has eight medical residency programs, three of which already receive a tax credit for charitable contributions because of their association with an accredited university. This bill will allow a medical residency program that is accredited and actively placing residents throughout the State to be eligible for a tax credit for charitable contributions. **Representative Erpelding** stated this legislation will help place more medical residents in underserved, rural communities, and also help increase the number of doctors in Idaho.

Senator Vick asked Representative Erpelding to explain the fiscal note. **Representative Erpelding** explained that a value was calculated using the average amount of annual donations from all medical residency programs; \$25,000 is a high estimation of the actual fiscal impact to the General Fund. He expects this amount to increase, with increased private investment and charitable contributions to these programs.

Senator Patrick asked how much money is donated annually to medical residency programs in Idaho. **Representative Erpelding** reported the total amount of charitable donations to these programs is approximately \$25,000 annually. He explained that, if the proposed tax credit were implemented for all eight medical residency programs, the actual fiscal impact would be less than \$25,000. A high estimation was provided to account for future growth.

Senator Hill expressed his opinion that **H 451** aligns with the intent of the statute because it provides a tax credit for contributions to programs that would otherwise be fully supported by the State.

MOTION: **Senator Hill** moved to send **H 451** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 3:12 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 14, 2018

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Ken Roberts of Donnelly, Idaho was appointed to the Multistate Tax Commission to serve a term commencing January 29, 2018.	Ken Roberts
<u>Docket No. 35-0102-1702</u>	Idaho Sales and Use Tax Administrative Rules	Tom Shaner, Idaho State Tax Commission
Minutes Approval	Minutes of February 1, 2018	Senator Hill Senator Patrick
Page Graduation	Farewell to Page Christine Peterson	Chairman Johnson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, February 14, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: Senator Hill

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

GUBERNATORIAL APPOINTMENT: **Ken Roberts of Donnelly, Idaho was appointed to the Multistate Tax Commission to serve a term commencing January 29, 2018.**

Chairman Johnson welcomed Ken Roberts, Chairman, Idaho State Tax Commission (Commission) to the podium. **Commissioner Roberts** explained that the Multistate Tax Commission (MTC) is an intergovernmental state tax agency that facilitates the equitable administration of tax laws to multistate and multinational enterprises. There are approximately 12,700 multistate companies that file taxes in Idaho. **Commissioner Roberts** stated that Idaho Code § 63-3703 requires the Governor, with consent from the Senate, to appoint one representative to the MTC. Idaho Code § 63-3706 requires a Multistate Tax Compact advisory committee, composed of representatives from various state agencies, to meet annually to review multistate taxation issues and present recommendations to the Idaho Legislature and the MTC.

Senator Siddoway asked Commissioner Roberts what issues he will bring, regarding Idaho's tax system, to the MTC. **Commissioner Roberts** stated that market sourcing is an emerging national issue; he indicated his intention to bring together legislators, Commission staff, and tax professionals to determine Idaho tax policy in this regard. **Senator Siddoway** then asked if issues pertaining to Idaho conformity, specifically regarding pass-through entities, fall within the purview of the MTC. **Commissioner Roberts** responded that tax applied to pass-through entities does not because this type of income is reported on individual tax returns.

Senator Nye reported that the MTC has filed a brief in support of South Dakota in its Supreme Court petition in the *Wayfair* case. He asked Commissioner Roberts if he will have authority to weigh in on these types of cases. **Commissioner Roberts** replied that statute grants authority to the Idaho member of the MTC to represent the State. He highlighted the importance of the confirmation process in this regard.

Senator Burgoyne asked how MTC member voting is determined. **Commissioner Roberts** stated that each state is entitled to one vote.

Chairman Johnson asked Commissioner Roberts about potential conflicts of interest relating to his appointment. **Commissioner Roberts** did not foresee any conflicts of interests. **Chairman Johnson** indicated the confirmation vote will occur the following week.

**PASSED THE
GAVEL:**

Chairman Johnson passed the gavel to Vice Chairman Bayer.

**DOCKET NO.
35-0102-1702**

Relating to Idaho Sales and Use Tax Administrative Rules. Vice Chairman Bayer explained that the Committee will address Section 013 of **Docket No. 35-0102-1702**; the remaining sections of the docket have been approved by the Committee.

Tom Shaner, Tax Policy Manager with the Commission, presented pending Rule 013. **Mr. Shaner** noted this was negotiated rulemaking. He reviewed Idaho statutes pertaining to the application of sale and use tax and relevant tax exemptions. **Mr. Shaner** stated that, without statutory designation, the use of materials by a contractor is subject to use tax. He sees no statutory distinction between repairs and maintenance, and improvements to real property. **Mr. Shaner** then explained that the proposed examples in Section 013 are intended to provide clarity and guidance for contractors in this arena.

Senator Rice commented that his previous concerns regarding the constitutionality of the proposed rule change have not been addressed. **Mr. Shaner** deferred to Phil Skinner, Deputy Attorney General assigned to the Commission, to address the legal basis for the rule change.

DISCUSSION:

A discussion ensued regarding the constitutionality of the proposed examples to Subsection 013.03. **Senator Rice** discussed federal court proceedings pertaining to the application of tax to federal contractors, due to the similar nature of constitutional-level exemptions. That court ruled that a contractor, acting as a federal procurement agent, can be so closely associated with the government in the purchase of materials as to constitute a sale to the government. The imposition of tax on a contractor under these circumstances constitutes a tax directly on the federal government. **Senator Rice** asked Mr. Skinner if this suggests that the imposition of tax on a contractor for the use of materials already owned by a state or political subdivision falls under the same category of tax liability. **Senator Rice** concluded that, using the same analysis, all of the proposed examples in Subsection 013.03 violate Article 7, Section 4 of the Idaho Constitution.

In response, **Mr. Skinner** stated that federal court held it is constitutionally irrelevant if a contractor paid sales or use tax that was subsequently passed on to a governmental entity. He further asserted that the federal court rulings are not applicable to use tax. **Mr. Skinner** indicated that the Idaho Supreme Court has ruled that Article 7, Section 5 applies only to property tax. The Court has not addressed Article 7, Section 4, but **Mr. Skinner** felt that it would not apply to tax imposed on the use of property owned by the State.

TESTIMONY:

Rick Smith, representing Johnny B Transport, spoke in opposition to the proposed changes to Section 013. He noted that a 1984 district court decision held that a chip sealer, under the direction and supervision of a county authority, does not have sufficient control over asphalt to satisfy use tax requirements. The proposed rule changes are not clarifications, but changes to the way the law is applied. In his opinion, if the statute is ambiguous, the statute should be amended through legislative action rather than rule promulgation. **Mr. Smith** asked the Committee to reject Subsection 013.02 and 013.03(b).

Senator Nye asked Mr. Smith to comment on the applicability of the 1984 district court decision. **Mr. Smith** stated the doctrines of *res judicata* and *collateral estoppel* would apply to the Commission in its imposition of tax statewide; in his opinion, the court decision provides legal precedent on this issue. The Commission did not appeal the district court decision.

Chairman Johnson asked Mr. Smith if equal application of use tax to all road contractors would mitigate his concerns. **Mr. Smith** felt it would be difficult to determine if tax were applied uniformly to all contractors. He stated that road contractors would ultimately transfer the tax amount to the client; if the client is a governmental entity, the same legal challenges would apply.

Vice Chairman Bayer noted for the record the correspondence from Elliot Werk, Commissioner, Idaho State Tax Commission, regarding Section 013 of **Docket No. 35-0102-1702**.

Senator Burgoyne felt the central issue is whether the proposed rule is consistent with statute. The nature of the 1984 district court case is binding on the Commission in relation to one taxpayer. The rule, however, will have Statewide application. **Senator Burgoyne** concluded that the Commission is not precluded from promulgating a rule, nor is the Legislature precluded from approving a rule based on a court decision.

Senator Rice stated that his analysis of statute is based on the Idaho Constitution, and he believes that Article 7, Section 4 prohibits the application of tax to State property. The proposed examples in Subsection 013.03 do not specify that property donated to the State is exempt from taxation; rather, the examples appear to dictate that the use of such property is taxable to a contractor. **Senator Rice** felt that statute is unclear regarding the tax imposition of property independently owned by the State.

Mr. Shaner returned to the podium to provide closing remarks. **Senator Burgoyne** asked Mr. Shaner if Section 013 includes donations of property to the State within its scope, and if the Commission agrees that such donations are taxable. **Mr. Shaner** felt the Commission could have been more clear on donated property, and he stated that materials purchased by a highway district may be subject to tax.

MOTION: **Senator Rice** moved to reject Subsections 013.02 and 013.03 of **Docket No. 35-0102-1702**. **Senator Burgoyne** seconded the motion.

Vice Chairman Bayer called for a roll call vote. **Vice Chairman Bayer, Senators Rice, Vick, and Burgoyne** voted **aye**. **Chairman Johnson, Senators Siddoway, Patrick and Nye** voted **nay**. The motion failed.

MOTION: **Senator Patrick** moved to approve Section 013 of **Docket No. 35-0102-1702**. **Senator Siddoway** seconded the motion.

Senator Rice called for a roll call vote. **Chairman Johnson, Vice Chairman Bayer, Senators Siddoway, Patrick, and Nye** voted **aye**. **Senators Rice, Vick, and Burgoyne** voted **nay**. The motion carried.

PASSED THE GAVEL: Vice Chairman Bayer passed the gavel back to Chairman Johnson.

MINUTES APPROVAL: **Senator Patrick** moved to approve the Minutes of February 1, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

PAGE GRADUATION: **Chairman Johnson** thanked Senate Page Christine Peterson for her service. He recognized her hard work and dedication to the Committee.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:18 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, February 20, 2018

SUBJECT	DESCRIPTION	PRESENTER
Introduction	Welcome to Senate Page Paige Nelson	Chairman Johnson
Vote on Gubernatorial Appointment	Ken Roberts of Donnelly, Idaho was appointed to the Multistate Tax Commission to serve a term commencing January 29, 2018.	
<u>S 1309</u>	Relating to Fire Districts; vacancies of fire protection district commissioners	Senator Lee
<u>H 449</u>	Relating to Income Taxation; Bullion	Senator Vick Stefan Gleason, Money Metals Exchange
<u>H 450</u>	Relating to Budgets of Taxing Districts	Representative Harris
Minutes Approval	Minutes of January 31, 2018	Senators Rice and Siddoway
	Minutes of February 6, 2018	Senators Burgoyne and Nye
	Minutes of February 7, 2018	Vice Chairman Bayer, Senator Patrick

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson	Sen Vick
Vice Chairman Bayer	Sen Patrick
Sen Hill	Sen Burgoyne
Sen Siddoway	Sen Nye
Sen Rice	

COMMITTEE SECRETARY

Jennifer Carr
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, February 20, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:07 p.m.

H 449 **Relating to Income Taxation of Bullion.** **Senator Vick** presented **H 449**, which proposes to exempt the sale of precious metal bullion from capital gains taxation.

TESTIMONY: **Stefan Gleason**, President, Money Metals Exchange, spoke in support of **H 449**. This legislation proposes that capital gains and losses of precious metal bullion and monetized bullion sales be added or subtracted from Idaho taxable income. **Mr. Gleason** discussed federal monetary policies regarding inflation, and how these policies have affected values of gold and silver over time. He remarked that the Internal Revenue Service (IRS) treats precious metals as property, rather than money, for taxation purposes. Precious metal bullion is taxed as a collectible at a rate of 28 percent. In his opinion, such practice does not comply with federal law.

Senator Patrick commented on inflation, in general, and the devaluation of gold over the past five years. He felt the proposed exemption will not provide a true offset to inflation. **Mr. Gleason** stated that inflation is more pervasive than simply affecting gold and silver values. Gold and silver are money, and its exchange should not be taxed.

Lawrence Hilton, General Counsel, United Precious Metals Association, spoke in support of **H 449**. **Mr. Hilton** provided an overview of U.S. monetary policy regarding precious metals. He said that Article 1, Section 10 of the United States Constitution mandates that gold and silver be treated as legal tender. He felt that the application of tax to precious metal bullion by the IRS does not comply with federal law in this regard. In his opinion, taxation destroys the monetary character of gold and silver.

Senator Hill asked Mr. Hilton a series of questions regarding litigation. His line of questioning emphasized whether the rationale used to prevent State taxation of precious metal bullion can be applied to the federal government. **Mr. Hilton** provided examples of federal court cases and instances of taxpayers challenging the IRS and prevailing. He commented that the courts have ruled both against and in favor of exempting precious metal bullion from taxation; these decisions vary by judicial district. **Mr. Hilton** expressed his opinion that the IRS, in its treatment of capital gains, does not comply with existing federal law, which is very clear on this issue.

Senator Nye asked Mr. Hilton if he is a registered Idaho lobbyist or if he is licensed to practice law in Idaho. **Mr. Hilton** stated no.

Senator Siddoway asked Mr. Hilton if he owns precious metal bullion, and if uses it to make routine purchases. **Mr. Hilton** stated he owns gold and silver. He treats it as a currency and uses it in some financial transactions.

ORIGINAL MOTION:

Senator Rice moved to table **H 449**. **Senator Siddoway** seconded the motion.

DISCUSSION:

Vice Chairman Bayer asked Senator Vick to comment on concerns regarding the discernment between forms of precious metals and their monetization. In response, **Senator Vick** asked the Committee members to articulate their concerns regarding **H 449**.

Senator Rice stated the values of precious metals do not fluctuate based on inflation; they fluctuate based on factors such as use and demand. In his opinion, gold and silver are commodities rather than currency, and this bill will simply exempt a commodity from taxation. **Senator Rice** felt the exemption is too broad because it exempts bullion and other precious metals that have never been used as currency.

Senator Siddoway referred to the statutory definitions of "precious metal bullion" and "monetized bullion." He raised the question, if a mining company refined metals in a manner as defined by statute, would these metals be considered monetized bullion and thus exempt from taxation.

Senator Patrick expressed concern about the legislation because, in practice, precious metal bullion is not treated or used like currency in routine transactions.

Senator Vick addressed these concerns and suggested amending **H 449** to narrow the definitions of "precious metal bullion" and "monetized bullion" in Idaho Code § 63-3622V.

SUBSTITUTE MOTION:

Senator Vick moved to send **H 449** to the 14th Order for amendment. **Vice Chairman Bayer** seconded the motion.

Senator Burgoyne stated he will not support the substitute motion. In his opinion, the proper forum for this issue is the judicial branch.

The substitute motion failed by **voice vote**.

VOTE ON ORIGINAL MOTION:

A roll call vote was requested. **Chairman Johnson, Senators Siddoway, Rice, Patrick, Burgoyne, and Nye** voted **aye**. **Vice Chairman Bayer, Senators Hill and Vick** voted **nay**. The motion carried.

S 1309

Relating to Fire Protection Districts. **Senator Lee** presented **S 1309**. This legislation seeks to repeal Idaho Code § 31-1418, pertaining to temporary inability and replacement of a fire protection commissioner. In lieu of this statute, **S 1309** proposes language be added to Idaho Code § 31-1409, allowing a commissioner to nominate and appoint a temporary - rather than a permanent - vacancy. This bill also creates a mechanism to replace a fire protection district board that is completely vacant.

Senator Lee indicated that the proposed language does not address the issue of a board not having a quorum to conduct the business of replacing vacant seats. **Senator Lee** referenced suggested amended language to address this oversight. **S 1309** also seeks to amend Idaho Code § 56-1018B to authorize fire districts to license vehicles, acquired through grants from the Emergency Medical Service, in the fire district's name rather than the city or county. **Senator Lee** asked that **S 1309** be sent to the 14th Order for possible amendment.

TESTIMONY:

Crystal Hinkle, representing the Idaho State Fire Commissioners' Association (ISFCA), spoke in support of **S 1309**. **Ms. Hinkle** read correspondence from David "Rudy" Rudebaugh, President of the ISFCA (see attachment 1).

MOTION: **Vice Chairman Bayer** moved to send **S 1309** to the 14th Order for amendment. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 450 **Relating to Budgets of Taxing Districts.** **Representative Harris** presented **H 450**. He explained that 2017 HB 207 granted authority to taxing districts to disclaim any portion of their forgone balances for the current year. Statute currently requires a taxing district to adopt a resolution to disclaim any portion of its forgone balance at the annual budget hearing. **H 450** will amend Idaho Code § 63-802 to eliminate the requirement these decisions be made at the annual budget hearing. This bill will also require that the resolution be filed with the county clerk and the Idaho State Tax Commission. **Representative Harris** felt this will provide more flexibility as to when a taxing district may adopt such a resolution; this is imperative for taxing districts that do not conduct an annual budget hearing.

Senator Siddoway asked what taxing districts have disclaimed forgone balances. **Representative Harris** replied Kootenai County and one recreation district.

Senator Nye asked Representative Harris if he received negative feedback from his district regarding **H 450**. **Representative Harris** acknowledged opposition from counties, but none within his district.

TESTIMONY: **John Evans**, Mayor of Garden City, Idaho, and representing the Association of Idaho Cities (AIC), spoke in opposition to **H 450**. **Mayor Evans** expressed his opposition to eliminating the current requirement that decisions regarding forgone balances be made during the annual budget hearing. **Mayor Evans** felt that decisions regarding forgone balances are most appropriately made, by the current governing body and with public input, during the annual budgeting process. He noted that changes in the governing structure may render forgone balance decisions to be made by officials that were not involved in budgeting for the current year. In his opinion, it does not make sense to disclaim the right to recover a forgone increase after annual budgeting has occurred.

DISCUSSION: **Senator Rice** asked for clarification regarding Mayor Evans' opposition in relation to changes of a city's governing body. **Mayor Evans** stated that the composition of city councils may change in the interim period after the appropriations process; for instance, budgets are set in August and elections are held in November. He questioned why budgets should be changed mid-cycle by newly-elected officials.

Senator Vick asked if the annual budgeting meeting is the only opportunity to make appropriations at the city-level. **Mayor Evans** explained there is a provision to readjust budgets to address unforeseen revenues or expenditures; he provided the example of Greenbelt damage in Garden City last year due to flooding.

Senator Hill asked if the proposed changes to **H 450** will prevent a taxing district from adopting a resolution at the annual budgeting hearing. **Mayor Evans** stated no; however, historically, annual budgeting is conducted during the appropriations process. **Senator Hill** interpreted the bill to provide more flexibility and options to cities in this regard. **Mayor Evans** responded that local control is desirable. In this instance, however, it may create administrative problems and inconsistency with established protocol.

Senator Rice asked Mayor Evans to clarify his argument that this proposal will disrupt the budgeting process. **Mayor Evans** replied that decisions regarding forgone balances should be made once a year to provide stability and continuity of the budget process.

Senator Patrick asked Mayor Evans to distinguish between reserve funds and forgone balances. **Mayor Evans** stated, in his opinion, forgone balances act as insurance; ideally, they are never needed. Under the current system, a taxing district may elect to disclaim all of its forgone balances. Fund balances are reserves within a city budget that allow a city to function without having to borrow money between property tax collections.

Representative Harris returned to the podium to provide closing comments. He stated this legislation does not affect the annual budgeting processes. In response to specific concerns, **Representative Harris** questioned why the authority of newly-elected officials to make fiscal decisions, outside of the annual budgeting process, should be limited in any way. In his opinion, it is restrictive to limit when a taxing district makes a decision regarding its forgone balance.

Senator Hill asked Representative Harris to explain the underlying purpose of the bill. **Representative Harris** stated, in his opinion, **H 450** clarifies the original intent of 2017 HB 207. The changes proposed in this bill are intended to assist taxing districts that do not conduct budget hearings.

MOTION: **Senator Rice** moved to send **H 450** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

DISCUSSION: **Senator Hill** stated he will not support the motion. He commented that when stakeholders are not in agreement, work can be done during the interim to address concerns and craft better legislation.

Senator Rice stated this legislation clarifies that taxing districts, that do not have an annual budget meeting, may still elect to disclaim its forgone balance. It does not change the process, but provides flexibility for all taxing districts in this regard.

ROLL CALL VOTE: A roll call vote was requested. **Vice Chairman Bayer, Senators Rice and Vick** voted **aye**. **Chairman Johnson, Senators Hill, Siddoway, Patrick, Burgoyne,** and **Nye** voted **nay**. The motion failed.

INTRODUCTION: **Chairman Johnson** welcomed Committee Page, Paige Nelson, and asked her to provide a personal introduction.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Siddoway** moved to send the Gubernatorial appointment of Ken Roberts to the Multistate Tax Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Rice** moved to approve the Minutes of January 31, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

Senator Nye moved to approve the Minutes of February 6, 2018. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Bayer moved to approve the Minutes of February 7, 2018. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:36 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary



IDAHO STATE FIRE COMMISSIONERS' ASSOCIATION

February 19, 2018

Chairperson and Committee members, thank you for your consideration regarding S1309.

My name is David "Rudy" Rudebaugh. I am an elected fire district commissioner for the Timberlake Fire District in Athol, Idaho and President of the Idaho State Fire Commissioners' Association.

We are here today to discuss the requested changes to statute 31-1409, 31-1418 and 56-1018b within S1309.

About the requested change to 31-1409. This change is needed to insure fire districts within the state of Idaho have a procedure in place should they experience a majority of their local board of commissioner's positions become vacant. The key importance of the change will allow the entity to be able to perform the required duties of continued operation of a fire district with minimal disruption of emergency services to those they serve. Once the county commissioners appoint enough qualified individuals to regain a districts quorum, the said district can then fulfill the remaining positions as already provided for within statute 31-1409. When the district has zones in more than one county, it further insures all fire district citizens to have taxation with representation.

The request to repeal 31-1418. Within my home fire district and common throughout the state, fire district elected commissioners have had continued strain to comply with the current requirement to have 2 alternate commissioners should they be unable to perform their duties for longer than 90 days. In a majority of the 164 fire districts, this requirement remains difficult at best and many times due to the lack of interest and qualification of electors. Many times, the compliance is done by appointing family members or friends, so the district can follow the requirement imposed. While the intent of 31-1418 is understood, it also only appears in statues referring to legislative levels of our government, not taxing entities such as fire districts. The repeal of 31-1418 along with the procedures in 31-1409, provide for the best outcome for fire districts in having properly qualified commissioners.

The requested change to 56-1018b makes a fire district who is awarded an EMS grant able to license vehicles in the fire districts name. Since the fire districts is responsible for the grant, the city or county should not be required to title and license said vehicles acquired via the EMS grants.

The overall effect of these changes provides clarity and effective operation of Idaho's fire districts with maximum transparency.

922 S. Red Sand Ave., Kuna, ID 83634 Phone: 208-275-8870 Fax: 208-922-1700
Email: office@isfca.org Website: www.isfca.org

**"To inform, educate, represent, lead and serve the fire district
preservation and protection of life and property"**

Attachment 1



IDAHO STATE FIRE COMMISSIONERS' ASSOCIATION

These changes have no fiscal impact on a fire district or other governmental entities.
Chairperson and Committee members, I thank you again for your strongest consideration and approval of S1309.

Sincerely,

David "Rudy" Rudebaugh
President
Idaho State Fire Commissioners' Association

922 S. Red Sand Ave., Kuna, ID 83634 Phone: 208-275-8870 Fax: 208-922-1700
Email: office@isfca.org Website: www.isfca.org

**"To inform, educate, represent, lead and serve the fire districts of Idaho in the
preservation and protection of life and property."**

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, February 21, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 462</u>	Relating to Forest Lands Taxation	Emily McClure, Riley Stegner and Associates
<u>H 463</u>	Relating to Income Taxes, 2018 Conformity	Senator Hill

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, February 21, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:02 p.m.

H 462 **Relating to Forest Lands Taxation.** **Emily McClure**, representing Riley Stegner and Associates, presented **H 462**. **Ms. McClure** explained that taxpayers who own 5,000 acres or more of forest land are taxed differently than other types of property; they pay county property taxes according to a formula developed by the Committee on Forest Land Taxation (CFTM). She provided information on how this formula is calculated, which includes the productivity classification of a parcel of land.

Ms. McClure indicated that during the economic recession, the price of timber plummeted; as a result, the value of forest land decreased dramatically. To address the economic strain this had on timber-rich counties, the Idaho State Tax Commission (Commission) and the CFTM set a floor and ceiling for forest land values for a period of ten years. **Ms. McClure** outlined the agreement that was made with landowners and codified in Idaho Code § 63-1705(3). This section addresses values of forest lands for taxation purposes. She stated current law does not provide a consistent process for county assessors to follow when changing a parcel's productivity classification.

Ms. McClure explained as the economy began to recover, landowners in some counties received assessment notices reflecting increases in valuations due to a reclassification of the property. **H 462** will require the Commission and the CFTM to review and revise the rule for forest land productivity classification. **Ms. McClure** stated the intent is to provide a consistent process for all counties, including notification to landowners, qualifications for those performing forestry measurements, and standards for documentation and retention. Productivity classifications will remain at their 2016 levels until the rule is approved by the Legislature.

TESTIMONY: **Jim Riley**, representing Riley Stegner and Associates, spoke in support of **H 462**. **Mr. Riley** discussed how landowners in northern Idaho benefited from their agreement with local government during the economic recession (see Attachment 1). He indicated that, as the economy began to recover, some landowners saw a significant increase in the taxable land values of their property. **Mr. Riley** stated this was a result of assessors changing productivity classifications without regard to the terms codified in Idaho Code § 63-1705(3). This section specifies that annual changes in forest land values will not increase or decrease more than five percent from the prior year. He pointed out that the process for changing productivity classification is not uniform by county, and landowners are not always notified of these changes.

DISCUSSION: **Senator Rice** asked if the *Bonner County Daily Bee* is the main newspaper in a northern Idaho. **Mr. Riley** said this is the principal newspaper in Sandpoint, Idaho.

Senator Siddoway asked how many acres have been affected. **Mr. Riley** stated it varies by county. He will provide this information to the Committee.

Senator Burgoyne requested that Ms. McClure return to the podium. He asked her to comment on the correspondence from the Idaho Attorney General's Office regarding **H 462** (see Attachment 2). **Ms. McClure** agreed with the determination of fair market value for assessment purposes. However, she pointed out that when assessors do not follow consistent procedures, a fair market value cannot be determined. **Senator Burgoyne** asked if she felt the Attorney General's opinion concluded that **H 462** is unconstitutional, or if this legislation would be any less valid than other relevant statutes. **Ms. McClure** responded no, this statute would not be less valid; the Legislature has the authority to pass retroactive provisions.

TESTIMONY: **Mike McDowell**, Assessor, Kootenai County, spoke in opposition to **H 462**. **Mr. McDowell** stated he is a member of the CFTM. He said that, while the CFTM did agree to limit the increase or decrease per acre for each productivity class, there was no agreement to limit the proper classification of forest lands. Kootenai County, in its effort to update forest land classification, has found prior classifications to be inconsistent and inaccurate. **Mr. McDowell** stated that Kootenai County has followed established methodology in this regard. He felt the moratorium will provide an advantage to special interest groups, and that such a provision may be unconstitutional. An appeals process is available to landowners; to date, no industrial landowner in Kootenai County has appealed classification changes made over the past two years.

Senator Rice asked Mr. McDowell if he would accept a blanket increase of productivity classifications for all parcels across the county. **Mr. McDowell** felt these changes should be based on on-site evaluations; a blanket change of any kind would be a concern.

Seth Grigg, Executive Director, Idaho Association of Counties (IAC), spoke in opposition to **H 462**. **Mr. Grigg** stated the IAC opposes productivity classifications remaining at 2016 levels, with no sunset provision to ensure that rule promulgation is completed in a timely manner. He felt this moratorium has the potential to interfere with county assessors' statutory obligations to conduct annual appraisals.

DISCUSSION: **Senator Burgoyne** asked if passage of **H 462** would preclude county assessors from conducting annual valuations. **Mr. Grigg** affirmed. He then questioned the legality of instituting a moratorium.

Senator Rice commented that the counties seem to agree that problems exist within the appraisal process to warrant a moratorium. **Mr. Grigg** responded the qualifications themselves, rather than the appraisers conducting the fieldwork, need to be reexamined. In his opinion, it is not feasible for counties to require all appraisers to be professional foresters. **Senator Rice** then asked Mr. Grigg why he felt negotiated rulemaking would not be successful. **Mr. Grigg** expressed concern that if an agreement is not made during negotiated rulemaking, there will be little motivation for industry to act if values are frozen at 2016 levels.

Senator Vick asked if there have been cases where productivity classification changes were not supported with sufficient documentation. **Mr. Grigg** replied there have been instances in Bonner and Kootenai Counties of incomplete records. In these cases, land values were reverted back to previous levels and parcels were reevaluated. **Senator Vick** then asked if a landowner can appeal only in the year the valuation was changed. **Mr. Grigg** said that a landowner may appeal a valuation to the county Board of Equalization at any time.

Senator Patrick commented that an established floor and ceiling on forest land values would help counties set budgets. He asked Mr. Grigg to comment on variability in relation to county revenues. **Mr. Grigg** replied the disagreement stems from how stakeholders interpret the five percent valuation increase or decrease designated in statute. The IAC interprets that five percent is dependent upon the various productivity levels, rather than the parcel itself, which are established annually by the Commission.

Chairman Johnson asked Ms. McClure to provide closing comments. **Ms. McClure** commented that landowners feel they have been treated unfairly. Attempts have been made to reach an agreement with counties without legislative intervention.

MOTION: **Senator Burgoyne** moved to send **H 462** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion.

DISCUSSION: **Senator Hill** stated he will support the motion with the understanding that the moratorium will be addressed in the interim. **Chairman Johnson** agreed. He also felt this issue should be addressed by the CFTM rather than the Legislature.

Senator Nye expressed concern regarding the Attorney General's opinion addressing the legality of this legislation.

Senator Rice commented that, in his opinion, a short-term moratorium is appropriate to ensure that certain processes are accurate and fair to taxpayers.

VOICE VOTE: The motion passed by **voice vote**.

H 463

Relating to Income Taxes, 2018 Conformity. **Senator Hill** presented **H 463**. This legislation will conform the Idaho income tax code to changes made to the Internal Revenue Code (IRC) that affect tax year 2018. This bill will also create an Idaho child credit of \$130 per child; reduce all personal income tax rate brackets by 0.475 percent; and reduce the corporate income tax rate by 0.475 percent. **Senator Hill** described each aspect of conformity that will affect tax year 2018, including a standard deduction increase, the elimination of personal and dependent exemptions, and various business income tax changes (see Attachment 3).

DISCUSSION: **Senator Nye** sought clarification regarding the fiscal impact. **Senator Hill** explained that Idaho taxpayers will pay \$97.4 million in taxes if the State conforms to the federal tax code and does not incorporate subsequent tax relief. **Senator Nye** asked if Idaho is mandated to conform this year for tax year 2018. **Senator Hill** stated the Idaho Legislature elects to conform to certain provisions each year.

Chairman Johnson asked Ken Roberts, Chairman of the Commission, to comment on the administration of conformity. **Commissioner Roberts** began by stating the Commission does not take a position on tax policy. He explained how the Commission will administer relevant tax policy in the upcoming year, which will include: 1.) developing a communications plan for taxpayers; 2.) updating tax forms and withholding tables; 3.) conducting taxpayer trainings; 4.) making changes to tax processing software; and 5.) conducting administrative rulemaking.

Senator Hill returned to the podium to address the tax reduction provisions in **H 463**. He stated this was an ideal opportunity to reduce the tax burden on Idaho taxpayers. **Senator Hill** explained that all personal income tax rate brackets, as well as the corporate income tax rate, will be reduced by 0.475 percent. This will decrease revenue by \$144.5 million and \$15.1 million respectively. This legislation will also create a child tax credit of \$130 per qualifying child, resulting in a revenue reduction of \$42.3 million. **Senator Hill** commented the last major income tax rate reduction occurred in 2012. **Senator Hill** then provided examples of how this legislation will impact tax liability by income and family structure; he indicated that large families will pay more than under the current tax system. He felt that a reduction in tax rates will stimulate the economy, attract business to the State, and create jobs, which are all positive outcomes for Idaho families.

Senator Hill also addressed conformity to the Section 199A provision regarding pass-through entities. Beginning in tax year 2018, pass-through entities will be eligible to deduct 20 percent of business income. **Senator Hill** acknowledged that Idaho does not have the same need to create a pass-through deduction as the federal government. However, he expressed concern that eliminating the pass-through deduction will discourage pass-through businesses, which constitute 80 percent of business in Idaho, from settling in Idaho. In conclusion, **Senator Hill** stated that, while **H 463** is not a perfect bill, it will benefit Idaho families and help make Idaho more competitive in relation to surrounding states.

DISCUSSION: **Senator Rice** asked if the 20 percent deduction for pass-through entities applies to professional services, such as lawyers and accountants. **Senator Hill** responded that the deduction does apply but is dependent upon income levels; the deduction is phased out for joint income levels between \$315,000 and \$400,000. **Senator Rice** disclosed a possible conflict of interest under applicable law, pursuant to Senate Rule 39(H).

Senator Vick sought clarification of the 20 percent deduction phase-out. **Senator Hill** explained the deduction is completely phased out at certain income levels.

Senator Patrick inquired if farm cooperatives are eligible for the pass-through deduction. **Senator Hill** indicated that the federal government is currently working to address this issue. **Senator Patrick** asked Senator Hill to explain how the Legislature will address potential changes at the federal level of conformity-related provisions. **Senator Hill** indicated that provisions of conformity are addressed annually, and that the Legislature will have the opportunity to reexamine this issue next year.

Chairman Johnson questioned why the State should conform to 199A, for the sake of simplifying the tax code, when it does not conform to other federal credits and incentives. **Senator Hill** replied that, historically, Idaho only conforms to federal definitions of income and deductions; Idaho implements its own tax rates and tax credits.

Chairman Johnson stated a C corporation (C corp) is taxed twice, while an S corporation (S corp) is taxed only once. He asked if this provides enough of an incentive for small businesses to not conform to 199A. **Senator Hill** responded his main concern, when considering conformity to 199A, is how small businesses perceive Idaho's tax system. **Chairman Johnson** then stated that a C corp and S corp, with the same amount of taxable income, are taxed at the same rate under Idaho's current tax structure. Given the pass-through deduction, however, the effective tax rate of an S corp would be lower. In his opinion, this is not transparent tax policy. **Senator Hill** agreed, but felt that this is a good way to incentivize, rather than subsidize, small businesses in the State. Corporations receive medical, retirement, and other benefits that are tax-exempt.

- TESTIMONY:** **Alex LaBeau**, President, Idaho Association of Commerce and Industry (IACI), spoke in support of **H 463**. He commented on the economic benefits of this legislation as applied to businesses and individual taxpayers.
- DISCUSSION:** **Senator Vick** asked Mr. LaBeau to comment on perceived inequities associated with the pass-through deduction. **Mr. LaBeau** replied that he has not received any feedback from IACI members regarding this issue.
- Chairman Johnson** asked Mr. LaBeau to comment on a statement IACI published on December 6, 2017, which stated, "There is sound practical logic for treating companies that operate under the corporate filing the same as the pass-through companies." **Mr. LaBeau** replied this statement referred specifically to keeping personal and corporate tax rates the same. The effective rates are different for individual companies depending on the type of business and its qualified deductions. **Chairman Johnson** then asked if conforming to 199A may result in C corps reorganizing into S corps, and the potential impact this would have on future tax revenues. **Mr. LaBeau** felt it would depend on a company's tax liability.
- Senator Nye** asked Mr. LaBeau to comment on current and future economic growth in Idaho. **Mr. LaBeau** said that growth in the State is reflective of many factors, including an effective Legislature.
- TESTIMONY:** **John Watts**, representing the Idaho Chamber Alliance, and **Pam Eaton**, representing the Idaho Retailers Association, spoke in support of **H 463**.
- Julia Page**, representing the Idaho Organization of Resource Councils, spoke in opposition to **H 463**. **Ms. Page** felt that conformity and tax relief should be addressed in separate legislation.
- DISCUSSION:** **Senator Burgoyne** commented this legislation will result in a tax increase for families with three or more children. Furthermore, the proposed policies will also result in a tax shift; all other tax groups will subsidize tax cuts for the top one percent of earners. In his opinion, such policies will not foster economic growth or support small businesses in Idaho. In regards to the 199A provision, **Senator Burgoyne** commented that pass-through entities, some of which are quite large, already enjoy an advantage with respect to corporations, which have double the tax liability. In conclusion, **Senator Burgoyne** felt the net reduction to State revenue is too costly, and will take funding away from education, public safety, and other essential services.
- Senator Rice** observed the nature of conformity this year is historically different due to the passage of federal tax reform. Conformity, in this instance, will result in a tax increase for Idaho taxpayers. In his opinion, waiting until January 2019 to address conformity for tax year 2018 will result in over-withholding and greater difficulty in projecting next year's budget. The same difficulties will arise if tax relief is not addressed, as well. **Senator Rice** felt the proposed legislation is a reasonable approach that will benefit Idaho taxpayers and businesses.
- Senator Patrick** stated he will support this legislation. He commented that, as a small business owner, the 199A provision is important because it allows him to reinvest money in his business and his employees.
- Vice Chairman Bayer** commented on the changing landscape of tax policy across the State, particularly in the business arena. He stated if this legislation passes, it will be necessary to consider tax policy from a different perspective in the future.

Chairman Johnson cited a report from the Idaho Center for Fiscal Policy (see Attachment 4) and spoke to the uncertainty of establishing assumptions regarding conformity-related business provisions. With respect to the 199A provision, he felt this will be a carveout with few economic benefits. **Chairman Johnson** recognized that conformity will result in a tax increase for some Idahoans, and that subsequent tax relief is warranted. As a legislator, his goal is to create stable, transparent tax policy; **H 463** does not achieve these goals.

Senator Vick commented on the merits of a flat tax rate; however, the complexity of federal tax code would make this difficult. He acknowledged certain tax inequities for large families, and he felt the elimination of sales tax on groceries will help lessen the impact to Idaho families in the future.

MOTION: **Senator Rice** moved to send **H 463** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion.

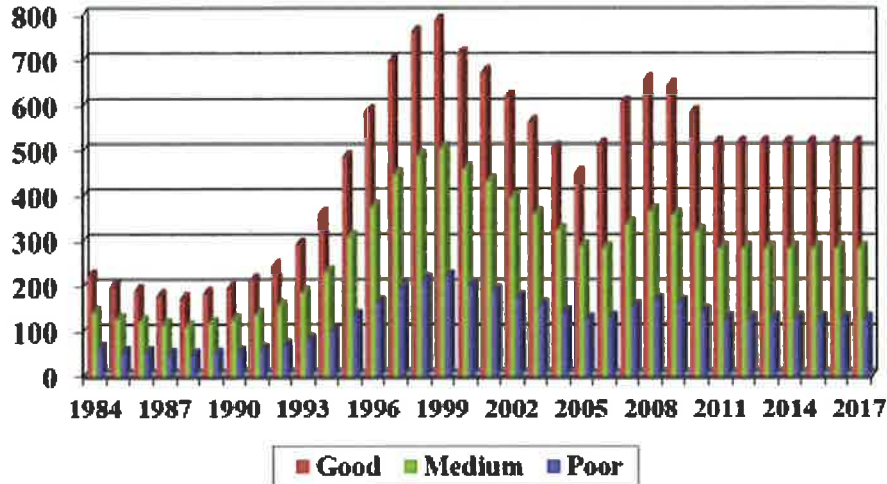
ROLL CALL VOTE: A roll call vote was requested. **Vice Chairman Bayer, Senators Hill, Rice, Vick,** and **Patrick** voted **aye**. **Chairman Johnson, Senators Siddoway, Burgoyne,** and **Nye** voted **nay**. The motion passed.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 5:25 p.m.

Senator Johnson
Chairman

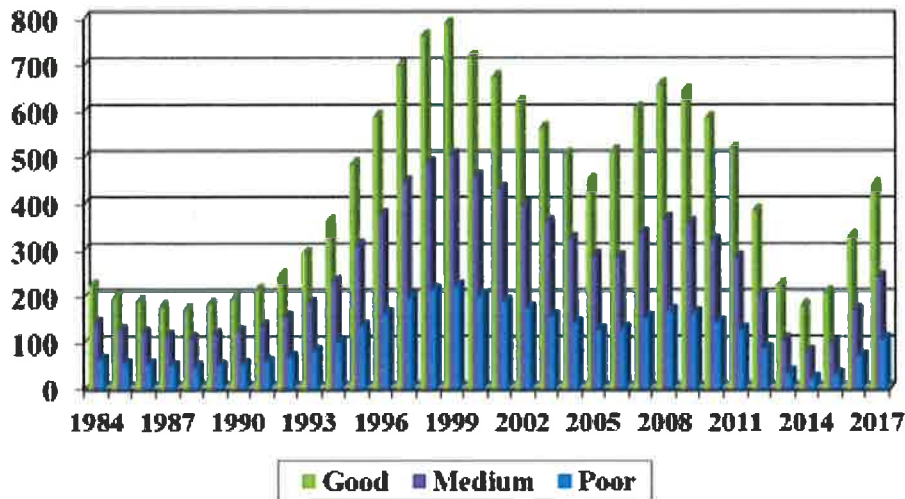
Jennifer Carr
Secretary

Assessed Forestland Values Productivity Option Zone 1 Used 2011 flooring values



Estimate
ISTC/CS 1/6/17

Calculated Forestland Values Productivity Option Zone 1 Used the Model Projections for 2017

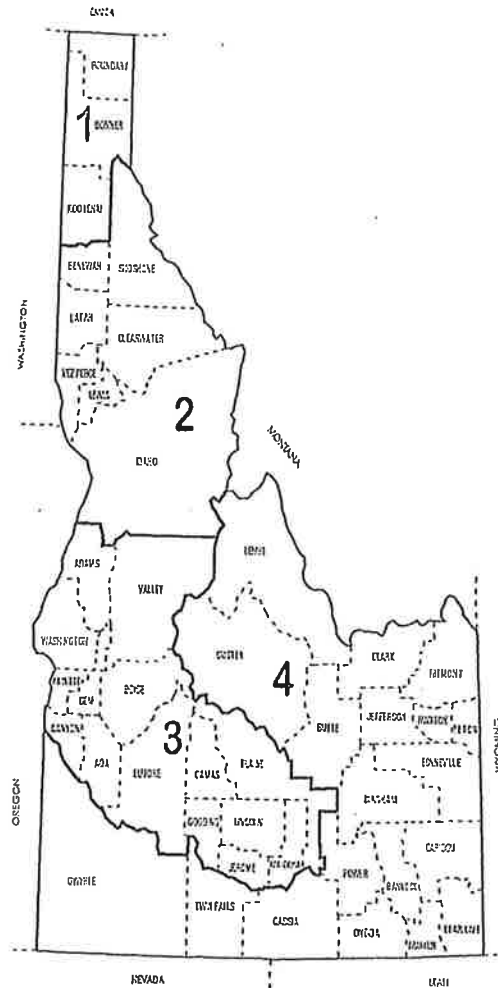


2017 Estimate

Estimate
ISTC/CS 1/6/17

2012 Forestland Value and Stumpage Value Zones in Idaho

Zone 1			
Land Grade			
Good	Med.	Poor	
\$149	\$104	\$61	Bare Land & Yield
\$518	\$284	\$128	Productivity
Zone 2			
Land Grade			
Good	Med.	Poor	
\$144	\$91	\$46	Bare Land & Yield
\$451	\$245	\$110	Productivity
Zone 3			
Land Grade			
Good	Med.	Poor	
\$102	\$65	\$34	Bare Land & Yield
\$197	\$104	\$43	Productivity
Zone 4			
Land Grade			
Good	Med.	Poor	
\$74	\$47	\$25	Bare Land & Yield
\$187	\$103	\$50	Productivity



Where Can I Obtain Additional Information?

If you need additional information concerning Idaho's Forest Tax Law, obtain a copy of the brochure titled "Idaho's Forestland Taxation Law 2012." A discussion of the two forest tax options is included in that brochure. It will help you understand the two tax systems and which of them would be best for you.

You can examine Idaho Code and Rule on the internet. The web site is: www.state.id.us/laws_rules. For Code sections, go to Idaho Statutes, title 63, chapter 17, Taxation of Forestlands and Forest Products. For rules, go to Administrative Rules, then Administrative Code, then Tax Commission, State (35), then Property Tax Administrative Rules 35.01.03, then the Forest Tax Rules 960 through 966.



BONNER COUNTY

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JUNE 30, 2016

1 DOLLAR NEWSSTAND

24 PAGES

VOL. 51 NO. 38

HOME-DELIVERED FOR 49¢ PER DAY OR LESS

Timberland tax rate rolled back

By LYNNE HALEY
Staff writer

SANDPOINT — Some Bonner County landowners will enjoy a measure of tax relief this year, thanks to commissioners Cary Kelly, Todd Sudrick and Glen Bailey. Tuesday, they voted to roll back taxes on timberland to 2015 levels, pending an investigation into the basis for a raise in rates this year.

"It came to our attention last week that the timber values for Bonner County residents

"I suggest we roll back the value and next year take a look at it and create a systematic game plan to address it."

—CARY KELLY, Bonner County commissioner

had changed. Based on the soil, timber is graded as Type 1, or good, which is the highest type," said Kelly, chair of the commission. Landowners with at least five acres of timber are eligible to apply for a forest land tax exemption from the

value of the land and projected timber growth. When they sell their timber, the county does not tax the proceeds.

Bare Land and Yield is the second option. Under this plan, the land is taxed at a significantly lower rate, but the owners must pay the county a 3-percent yield tax when they sell the mature trees. This option, in effect, lets timberland owners defer part of their annual tax until their trees are fully

See COUNTY, A3



—Photo by LYNNE HALEY

Commissioners vote on timberland tax break. From left, are Todd Sudick, Cary Kelly and Glenn Bailey.

COUNTY

from A1

grown, according to the assessor's office.

The per-acre value of forested property was based on the actual quality of a person's property in years past, according to Bonner County Assessor Jerry Clemens. Assessors rated land as good, average or fair. Each grade was associated with a valuation for tax purposes.

"We had parcels with a mix of grades," he said. "What we did (this year) was raise all parcels to 'good,'" he said.

The assessor's office took this action in response to a call by state forester Rod Brevig, forest land tax administrator for the state of Idaho. Brevig told the assessor's office that Bonner County values were too low, said Clemens, and that the soil and climate of the area prescribed a "good" value rating.

"We understood he wanted us to do it all in one year," he said, finding out after that fact that they could have raised values more gradually.

As a point of comparison, the county values poor quality timberland under the Land Productivity option at \$128 per acre while good quality land has an assessed value of \$518 per acre. Under the Bare Land and Yield option, Bonner County considers poor quality acreage to be worth \$61 per acre for tax purposes while good

quality acreage is worth \$149 per acre.

"Timber values vary quite a bit," said Bailey. "A blanket statement of ... value needs to be looked at and looked at hard."



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 21, 2018

SENT VIA ELECTRONIC MAIL TO: djohnson@senate.idaho.gov & STATEHOUSE MAIL

The Honorable Dan Johnson
Idaho State Senate
Idaho State Legislature
State Capitol
P.O. Box 83720
Boise, ID 83720-0081

RE: HB 462

Dear Senator Johnson:

Your request to Brian Kane for comment on the legality of certain aspects of current House Bill 462 was given to me for analysis and response. You ask specifically:

Can the legislature this year revert forestland productivity classifications for all parcels of land under the productivity option for taxation found in Idaho Code § 63-1705 to their classification as of January 1, 2016?

The proposed legislation at issue reads:

(4) On the effective date of this act, each forest land parcel shall remain at or revert to the productivity classification it held on January 1, 2016; however, taxes assessed prior to the effective date of this act shall be due and payable under the productivity classification in effect at the time of assessment. The CFTM shall designate a process by which county assessors may change a parcel's productivity classification. At a minimum, the process shall set forth requirements for landowner notification, inspector qualifications and document retention. The state tax commission shall promulgate rules to implement the CFTM-designated process. After legislative adoption of the rules, forest productivity classification may be subject to change pursuant to the process set forth in the rules.

(HB 462 emphasis added).

Short Answer

The italicized passage above is the clause to which your question pertains. While the intent behind that clause is probably legal, the language trying to fulfill that intent is probably not because it results in taxation of property at an amount of value other than market value, resulting in an exemption of value not specifically identified in the statute. The Idaho Constitution allows the legislature plenary power to provide for exemptions from taxation. If the legislative intent of HB 462 is that it be an exemption, the specific language of the bill should identify it as such.

MARKET VALUE AS ESTABLISHED BY LAW

Constitutional Provisions

Article VII, § 2 of the Idaho Constitution provides for levying a tax by value so that “every person or corporation shall pay a tax in proportion to the value of his, her, or its property.” Article VII § 5 provides that all taxes shall be uniform within the territorial limits of the authority levying the tax. Uniformity requires that taxable property in a taxing district must be assessed at the same level of market value and it must be taxed at the same levy rate. Idaho Telephone Company v. Baird, 91 Idaho 425 (1967). “The same level of market value” means that one taxpayer cannot pay on the full market value of his property while another only pays on a percentage of his property’s market value, not that all similar properties will have similar values. Properties’ values will vary with the various differences they naturally have. “Taxed at the same levy rate” means one rate must be applied to all taxable property.

Taken alone, the uniformity clause in Article VII § 5 would disallow any exemption, because exemptions exclude some property from taxation while leaving other property fully taxed, logically resulting in dis-uniform taxation. The power to exempt property from taxation, however, is also found in Article VII § 5, where it says, “the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, . . .” The legislature’s power to exempt property from taxation is plenary, save only as it may be limited by state or federal constitutions. Achenbach v. Kincaid, 25 Idaho 768 (1914). The legislature may, therefore, exempt property from taxation as it sees fit, so long as the exemption is necessary and just.

Statutory and Administrative Rule Provisions

Article VII § 5 also requires taxes “be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.”

Idaho Code § 63-205 is a general law that governs timing and requirements for the assessment of property and it says, in pertinent part:

(1) All real, personal and operating property subject to property taxation must be assessed annually at *market value for assessment* purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission.

(*Id.* emphasis added).

“Market Value” is defined in Idaho Code § 63-201 as:

[T]he amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

In general, the difference between “market value” and “market value for assessment purposes” is any statutory exemptions that a particular type of property enjoys. This general guidance is memorialized in Property Tax Administrative Rule 217 subsection (1)(a), (IDAPA 35.01.03.217) in its definition of market value. However many types of property have specific statutory guidance to determine market value for assessment purposes, including low income housing, rate regulated utilities and, important for the issue at hand, forestland.

Forestland Valuation

Chapter 17 of Title 63, Idaho Code, governs the valuation and taxation of forest lands and forest products. Chapter 17 allows two types of taxation on forest land, the “productivity” option established in Idaho Code § 63-1705 and the “bare land and yield” option found in Idaho Code § 63-1706. In general, Section 1706 bifurcates the value of forest land into a bare land value that is assessed yearly, as any other property, and a value of the yield, the value of the timber on the land, that is taxed at a given percentage of value when harvested.

Market value for assessment purposes for forest lands in the “productivity” option under Section 1705 is determined in that section, as identified in the definition of “forest value” in Idaho Code § 63-1701. That definition is:

(8) “Forest value” means the market value for assessment purposes as determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through the timber productivity valuation process as prescribed by section 63-1705, Idaho Code.

Idaho Code § 63-1701.

Section 1705 establishes the Committee on Forest Land Taxation Methodologies (CFTM) within the Idaho State Tax Commission. An in depth analysis of the inception and inner workings of the

CFTM is unnecessary to review the issue at hand, but some historical background is appropriate. Volatility in the timber market made accurate assessment of forestlands difficult, so the CFTM was instituted to bring counties and industry together in order to negotiate a process that could be used to most closely determine forest land value. The CFTM work in that regard culminated in an agreed upon process to determine forest land value, the "User's Guide" of 2005, identified Section 1705, Subsection 2.

The Tax Commission also provides administrative rules relating to the process in Property Tax Administrative Rule 962 (IDAPA 35.01.03.962). In conjunction with the user's guide and other statutory guidance, Rule 962 divides the state into 4 forest valuation zones, and classifies forestlands within those zones into three productivity classes, poor, fair, and good, that are assigned values based on the land's ability to produce timber.

Because of continued market volatility, in 2012 further modification of the forest land valuation process was necessary to ensure that forest values reflected an accurate market value for assessment purposes. Section 1705 was modified to include a cap on increases or decreases of forest values of more than 5% a year, or more than 30% for the subsequent 10 years.

PROPERTY ASSESSMENT AND EQUALIZATION

Idaho Code § 63-301 requires county assessors to complete assessment by finding the market value for assessment purposes of all property in the county and entering such value on the property rolls before the fourth Monday of June. Idaho Code § 63-308 requires that each property owner be mailed a valuation assessment notice by the first Monday in June, listing the market value for assessment purposes of each property and the right to appeal those values to the county board of equalization (BOE).

Idaho Code § 63-501A explains the procedure for property tax appeals to the county BOE and gives the taxpayer until the fourth Monday in June to file an appeal. Subsection (2) of Section 501A authorizes appeals of BOE decisions under Idaho Code § 63-511. Section 511 allows appeals from the BOE to be taken to the Board of Tax Appeals or directly to the District Court in the County where the property is located.

In appeals to the county BOE, under Idaho Code § 63-502, the taxpayer has the burden of proof to establish that the assessor's determination of value is erroneous. In appeals from a county BOE to the BTA or District Court under Section 511, the burden is on the movant to establish that the valuation is erroneous, either as originally established by the assessor or as corrected by the county BOE on appeal from the assessor's valuation. There is, therefore, a presumption that an assessment is valid, absent facts to the contrary.

Once, by the fourth Monday of June, an assessment is entered on the rolls, it is used to complete a county's abstract of values that is presented to the Idaho State Tax Commission, sitting as the State Board of Equalization in August. After all property is equalized by the State BOE, those values are used to set levy rates throughout the state for the tax year.

ANALYSIS OF THE ISSUE

Industry representatives propose a moratorium on any changes to forest land classifications until the CFTM can institute a system to govern how such classifications can be fairly changed. The first passage of HB 462 is an attempt to legislate such a moratorium. Because changes to forest land classifications are changes to forest land value, the moratorium as written is probably not a legal vehicle to affect such change.

Market value for assessment purposes of forest land in the productivity option under Idaho Code § 63-1705 is set by the procedure described hereinabove. In this case, there is question as to whether or not that method, as used by the counties at this time, determines the most accurate market value for assessment purposes that may be calculated. It may, therefore, be appropriate to institute a moratorium on changes to forest land classifications going forward until such time as the CFTM can determine whether changes to the method used to value those lands are appropriate. Backdating such a moratorium to January 1, 2016 however, results in values that have been determined by the current process to be accurate reflections of market value for assessment purposes being changed, resulting in a de facto exemption of certain property value.

As noted hereinabove, the legislature has plenary power to exempt property, and exemptions are included when coming to a final market value for assessment purposes. The proposed language does not indicate a legislative intent to exempt any property from taxation. The result of the legislation, however, is to reduce values of property not by modifying the method in which market value for assessment purposes is calculated, but by reducing valuations that have already passed through the valuation process and are, by operation of existing law, presumed to be accurate.

Legislative exemptions are usually identified in one of two ways. The first is specific language identifying the legislation as holding an intent to exempt property, such as "the following property is exempt" or "under these conditions, the property of X is exempt." The second is language found in a section of law that specifically concerns tax exemptions. For instance, there are dozens of property tax exemptions found in Title 63, Chapter 6, of Idaho Code, titled Property Exempt from Taxation.

Chapter 17 of Title 63 concerns forest land valuation, and Idaho Code § 63-1705 specifically identifies the method of valuing certain forest land. It sets forth the method to determine the market value for assessment purposes of that land, but does not contain any exemptions from that value. Should an exemption from that value be included in that section, explicit language of that intent should be included, in order to ensure that the resulting changes to value and accompanied shifts in tax rates are identified.

Alternatively, a moratorium that started for unassessed tax years is probably legally acceptable, because it would simply change the current valuation process and result in a market value for assessment purposes that could be considered the most accurate available at the time. Just as the legislature determined in the current statute that an accurate market value for assessment purposes for certain forest land classifications would be one that would not change more than 5%

a year, it could also determine that the most accurate value would result in lands not changing in classification at all. But a change in classifications that were legally established and are presumed correct by operation of law can only be considered an exemption in excess of current market value for assessment purposes.

CONCLUSION

The language of HB 462 may result in an illegal modification of forest land values because it will result in certain properties not being assessed at market value for assessment purposes without proper exemption language.

To ensure that legislative intent is carried out in the bill, explicit exemption language should be included for the difference in market value for assessment purposes that is determined by following the forest land valuation process and the value that would result due to the proposed moratorium. Alternatively, any included moratorium should be in relation to a perceived lack of ability to establish a proper market value for assessment purposes through the current forest land valuation process and should only look forward, not apply to already established values.

I hope this responds to your question. If you have any further questions, please contact me at the number below.

Sincerely,



GEORGE R. BROWN
DEPUTY ATTORNEY GENERAL
(208) 334-7534
George.brown@tax.idaho.gov

GRB/bai

cc: Brian Kane

Federal Tax Reform – Idaho Impact Detail Summary

2017 CONFORMITY	
RETROACTIVE PROVISIONS	
	In Millions \$
1. Medical threshold	(\$6.4)
2. International	Positive unknown

2018 CONFORMITY	
INDIVIDUAL	
	In Millions \$
3. Standard deduction increase	(\$340.5)
4. Personal exemption	\$272.3
5. Dependent exemption	\$139.5
6a. Itemized deductions	\$55.3
6b. Residual medical threshold from 2017	(\$1.8)
7. Education expenses	(\$6.0)
Total Individual	118.8
BUSINESS	
8. Section 179	(\$6.0)
9. Simplified accounting	(\$12.8)
10. Interest expense	\$14.2
11. 1031 exchanges	\$0.8
12. S corp. to C corp. conversion	(\$0.8)
13. Inclusion of income	\$2.0
14. Repeal Section 199	\$7.3
15. Repeal entertainment expense	\$2.7
16. Repeal employee transportation	\$2.0
17. Section 199A--pass-through	(\$46.9)
18. Section 461 Loss Limitation	\$16.1
Total Business	(21.4)
Total Effect 2018 Conformity	\$97.4



**Additional Analysis: Impacts of House Bill 463 Including the Pass-Through Deduction
(199A) Provision
February 20, 2018**

Note: The Idaho Center for Fiscal Policy previously released analysis of House Bill 463. As explained in that brief, the analysis did not include the impacts of business tax provisions. The Center can now provide an analysis of the proposal that accounts for the impact of the pass-through deduction specifically. Other business provisions remain outside of the scope of this analysis. The impact of a proposed reduction in the state corporate rate is excluded from this analysis. That impact would primarily flow to the top earners. The Center has also simplified this analysis by providing all charts with the same income ranges across different family sizes.

House Bill 463 would make substantial changes to Idaho's tax code, in part as a response to recent federal tax cuts. The legislation would also cut Idaho's state income tax rates for households and corporations, changing significantly the way the income tax load is carried by residents. The proposal also includes a nonrefundable state child tax credit, although this does not offset the tax increases for some Idaho families from full conformity.

One motivation for reducing taxes this year is to offset the increase in revenue that full conformity – aligning our state tax code with recent federal changes – could bring. If Idaho chooses to fully conform, the state may collect additional revenue in the range of \$7 million to \$97.4 million.¹ While elimination of the personal and dependent exemptions will increase state revenue, a new deduction for pass-through income in this legislation could cost up to \$74 million, reducing most of that gain.²

Some Idahoans – particularly those with multiple children - will nonetheless pay more in state taxes from full conformity. Idaho legislators have expressed a desire to reform state taxes so that dollars flow back to the households that experience a higher tax bill due to conformity.³ Analysis of this proposal shows that its tax cuts do not target these impacted households as much as they do high-earning households. The combined effect of full conformity and tax changes in House Bill 463 on all households would be a \$69 tax cut, on average, for the middle 20 percent of Idaho households and a tax cut exceeding \$8,700 for the top 1 percent. Households with several children are generally worse off and would see their taxes go up under this proposal (see chart on page 2).

Idaho's relatively strong economic growth in the past few years has produced revenue that has, for the most part, been invested in policy priorities that were cut deeply during the recession, and are strongly linked with long-term economic growth, such as schools and health services for children. Notably, this proposal would reduce revenue more than other recent state tax proposals. The fiscal impact of this tax proposal would be far deeper than offsetting the revenue gained by conformity.

¹ The low estimate was modeled by the Institute on Taxation and Economic Policy (ITEP). ITEP estimates do not model every conformity-related business provision that could affect revenue, in part due to the uncertainty in establishing assumptions about such provisions. This analysis includes an estimate of the impact of a state pass-through deduction (199A). The high revenue estimate is found on the bill's fiscal note.

² The Idaho Tax Commission estimated in December 2017 that the new pass-through deduction would cost \$30 million and on a subsequent fiscal note for House Bill 558 revised that to \$46.9 million.

³ Spence, William L. December 12, 2017. "Federal tax bill could have big implications for Idaho's state budget." *Lewiston Tribune*.

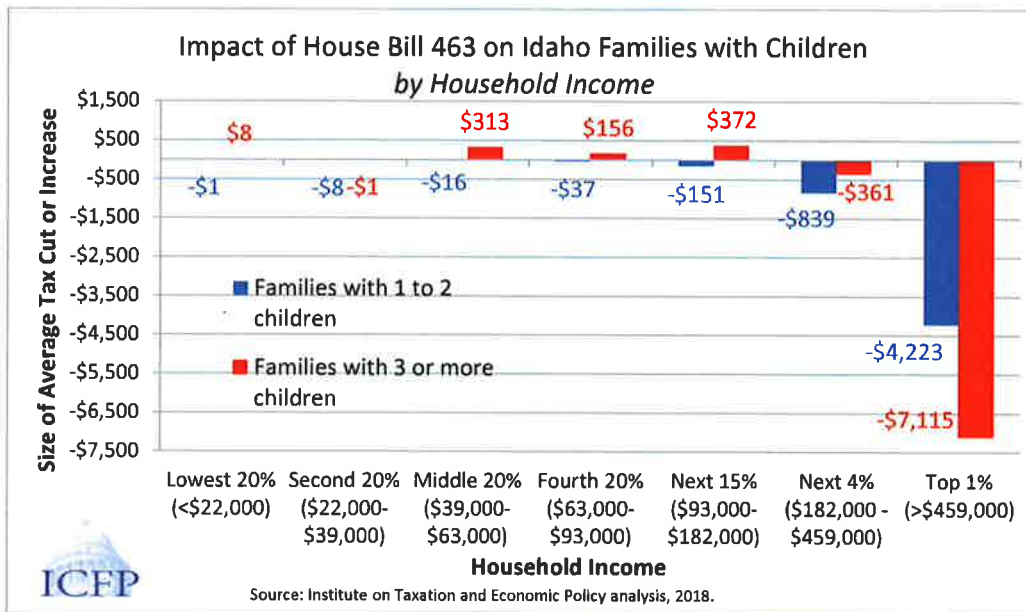
The net impact of House Bill 463 would be a general fund revenue reduction of \$105 million to \$179 million.⁴

The proposal would make four specific changes to Idaho’s tax system:

- *Conform the Idaho income tax code to changes made to the Internal Revenue Code that affect the 2018 taxable year.* The major provisions include: increasing the standard deduction and eliminating the personal and dependent exemptions, and a new state provision allowing the deduction of 20 percent of income from pass-through businesses.⁵ Some of these and additional Internal Revenue Code changes are temporary and will expire or phase-out after 2025 unless Congress acts.
- *Reduce the individual income tax rates for all brackets by a .475 of a percentage point.*
- *Reduce the corporate tax rate by .475 of a percentage point (not modeled in this analysis).*
- *Create a nonrefundable state child tax credit of \$130 per child.⁶*

This brief discusses the combined impacts of the different components of the tax proposal on Idaho households and then dissects each component separately.

Proposal Will Increase Taxes for Larger Middle-Class Families



⁴ Low estimate comes from the bill’s fiscal note. High estimate was modeled by the Institute on Taxation and Economic Policy including the new pass-through deduction.

⁵ According to the Brookings Institute, pass-through businesses - which include sole proprietorships, partnerships, and S-corporations - are not necessarily small businesses. Most hedge funds, private equity funds, law, consulting, and accounting firms are partnerships, for example, and can include publicly-traded partnerships. Other full conformity changes include limits on the state and local tax (SALT) deduction, changes to other itemized deductions, and additional business provisions.

⁶ According to the IRS, to be a qualifying child, the child must be under age 19 at the end of the year or under age 24 at the end of the year and a student, and must have lived with the claimant for more than half of the year. Provided they are younger than the claimant, children include sons and daughters, stepchildren, foster children, as well as siblings, half-siblings, and stepsiblings of the claimant, or descendants of any of them. People of any age who are permanently and totally disabled also qualify under this provision.

The combined effect of the tax changes and full conformity leaves many families with a considerable increase in tax responsibility. In particular, households with three or more children will generally pay hundreds more in taxes on average, unless their incomes are very high.

Households with an income between \$39,000 and \$63,000 and three children will end up paying \$313 more in state taxes, on average. Households with children that earn about \$459,000 or more will receive a large overall cut from the combined effect of the tax cuts and conformity. These top-earning households with one to two children will see a cut of \$4,223, and those with three children will see a cut of \$7,115, on average. The majority of the cut in this case derives primarily from the reduction in the state individual income tax rate and federal conformity, rather than the state child credit.

Impact of Full Conformity on Its Own Differs by Household Size and Income

This section analyzes the impact of full conformity in isolation. The effect of full conformity drives the disparity in gains between households with and without children in HB 463, and the disparity between smaller and larger families. Idaho households without children are more likely to see their tax bill go down due to full conformity, while households with more children are more likely to see their tax bill go up (see Appendix Charts 1 and 2).

However, households in the top 1 percent - earning \$459,000 or more - are especially likely to see their state taxes go down with full conformity. These households generally fare better because they benefit heavily from full conformity's provisions outside of the elimination of the personal exemption, such as the new 20 percent deduction on income from pass-through businesses that business owners can claim on the individual tax return.⁷

Idaho could avoid the negative impacts on working families by adopting federal changes while retaining the current personal exemption and standard deduction amounts. Idaho is among 9 states, along with the District of Columbia, that use federal definitions of the standard deduction and personal and dependent exemption.⁸ Other states have shifted to a state-defined standard deduction and a state-defined personal exemption, which shields households from changes in the federally-defined standard deduction and personal and dependent exemption.

State Income Tax Rate Reductions on Their Own Drive Uneven Gains

This section analyzes the impact of the income and corporate tax cuts in isolation. State individual income tax changes tilt the majority of the benefits of this proposal toward wealthier Idahoans. The top 1 percent – those with incomes of \$459,000 and above – would see a \$3,524 average tax cut just from a reduction in state income tax rates (see Appendix Chart 3). On top of state benefits, the wealthiest households in Idaho will also receive a cut of \$45,436, on average, on their federal tax bill.⁹

⁷ Idaho Tax Commission. 'Federal Tax reform – Idaho Impact.' Handout from presentation to the Joint Tax Committee, January 17, 2018. Other business-side provisions include allowing more small businesses to fully expense the cost of machinery and equipment rather than depreciating over time.

⁸ Tax Foundation. December 13, 2017. "Does Your State's Individual Income Tax Code Conform with the Federal Tax Code?"

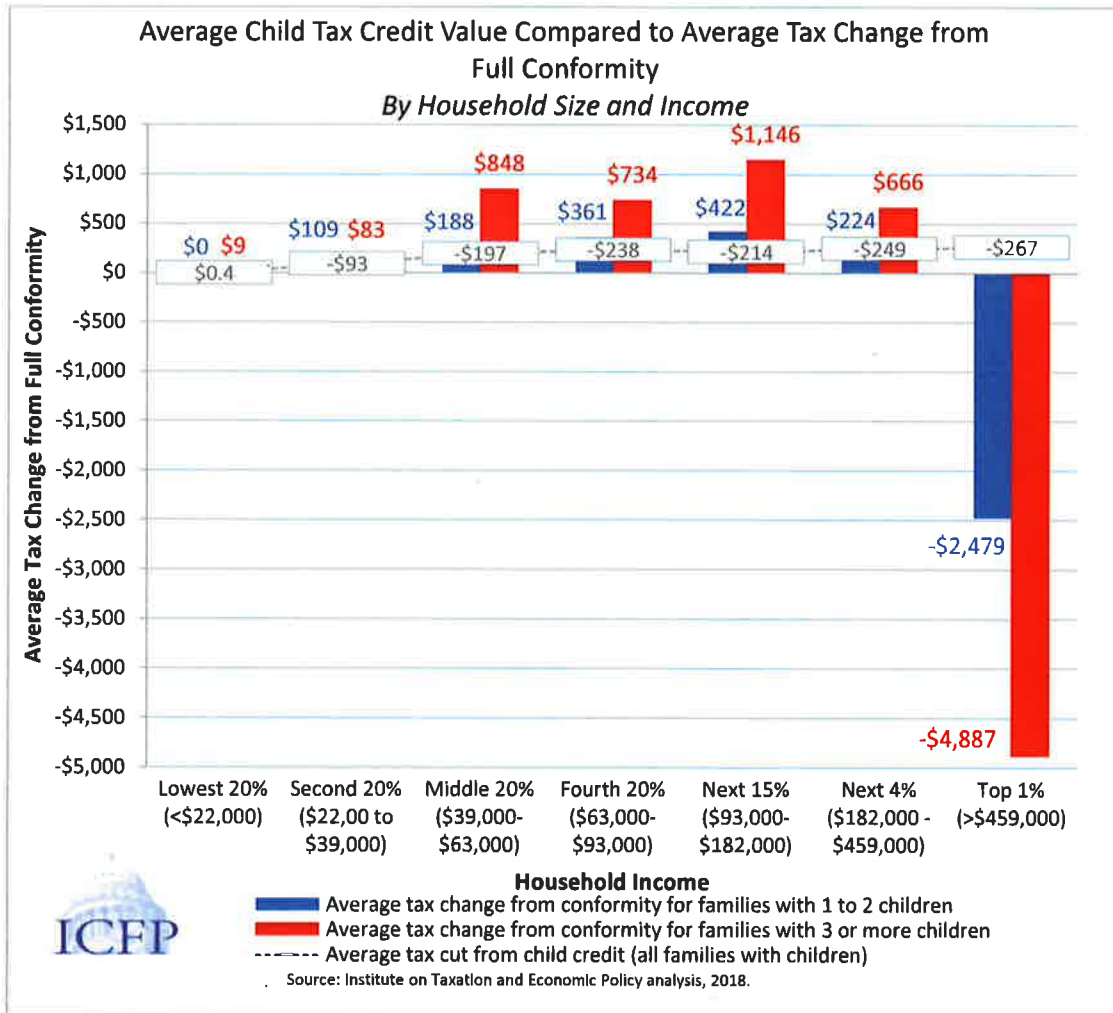
⁹ Analysis by Institute on Taxation and Economic Policy, 2018.

Idaho households with incomes between \$39,000 and \$63,000 a year would see an \$81 decrease in their tax responsibility from state income tax rate cuts, on average. Seventy-one percent of all households would see a cut in income taxes, while 29 percent would see no benefit.

State Child Tax Credit Is Not Targeted

This section analyzes the impact of the state child tax credit in isolation. Compared with average tax increases from full conformity, the average benefit of the child credit in this proposal is small (see chart below). Full conformity results in a tax increase of several hundred dollars for most households, while the value of the child credit is much lower. For households in the bottom 20 percent of the income range with children, the benefit is quite small. A nonrefundable credit means that people who owe very little or nothing on their income taxes will not be able to claim the full value of the credit, resulting in negligible benefits for households in the lowest income range.

Enacting the proposed nonrefundable child credit would reduce general fund revenue by \$47 million with 92 percent of benefits flowing to households earning more than \$39,000, on average. Since the child tax credit is nonrefundable, many families will not be able to claim the full value of the credit even if they pay a significant portion of their income in sales, excise, and/or property taxes.



Outlook: Uncertainty and Competing Pressures in Idaho's Tax and Budget Climate

Idahoans are generally content with how the Idaho Legislature has been managing tax and budget policy and revealed high levels of satisfaction with our current tax system.¹⁰ A strong majority of Idahoans think our taxes are 'about right.'

The fiscal year 2019 budget is tight, with many competing budget needs currently in play and many on the horizon. State government has identified a need for a new system for accounting and payroll that is estimated to cost \$102 million in the coming years.¹¹ The teacher career ladder and key related expenses are expected to cost \$46 million this year, while growing student enrollment will require an overall increase in the education budget.

At the same time, there is uncertainty surrounding multiple revenue sources. There is good reason to be cautious in predicting state revenues in the next few years. The nation has had an unusually long period of economic growth, underscoring the need to ensure that the state tax structure can weather an eventual downturn. The recently-approved federal tax cut could also prompt Congress to cut federal streams that Idaho weaves together with state resources to fund education, healthcare, infrastructure, and other services.

State revenue boosts from conformity are also highly uncertain and could easily erode over time. Taxpayers find loopholes as time progresses and taxpayer behavior can change, making it difficult to project the impacts of these provisions over time.¹² The major revenue-increasing provision in conformity –the elimination of the personal and dependent exemptions - is temporary and scheduled to expire by 2025. While conformity produces a revenue increase in 2019, it would produce a revenue loss should Idaho conform fully again when the provisions expire.

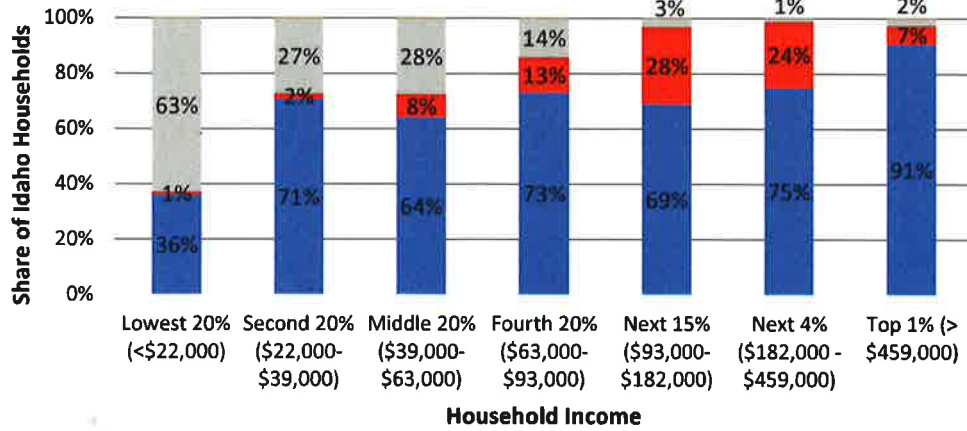
¹⁰ Boise State University School of Public Service. Idaho Public Policy Survey, 2018.

¹¹ Jani Revier. December 2017. Presentation to the Associated Taxpayers of Idaho Annual Conference.

¹² Center on Budget and Policy Priorities. January 23, 2018. "How Should States Respond to Recent Federal Tax Changes?"

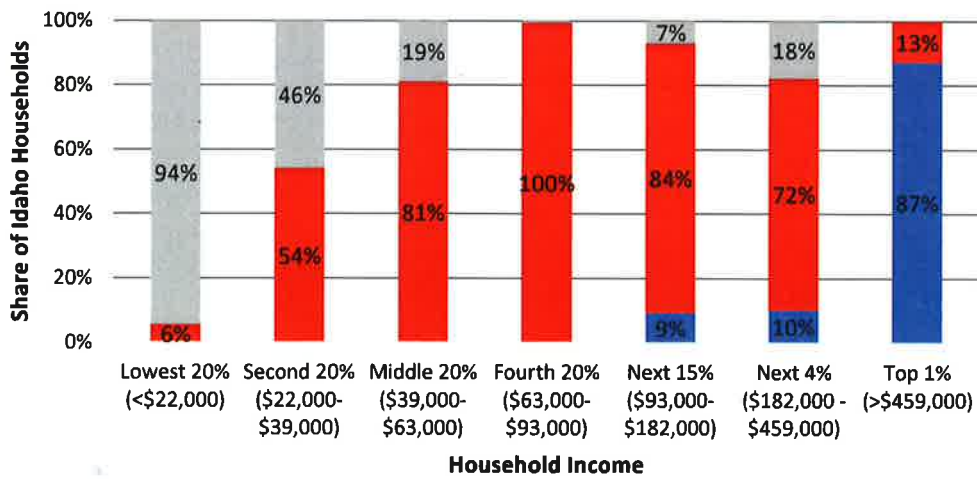
Appendix

**Chart 1: Idaho Households by Type of Tax Change from Conformity
No children**



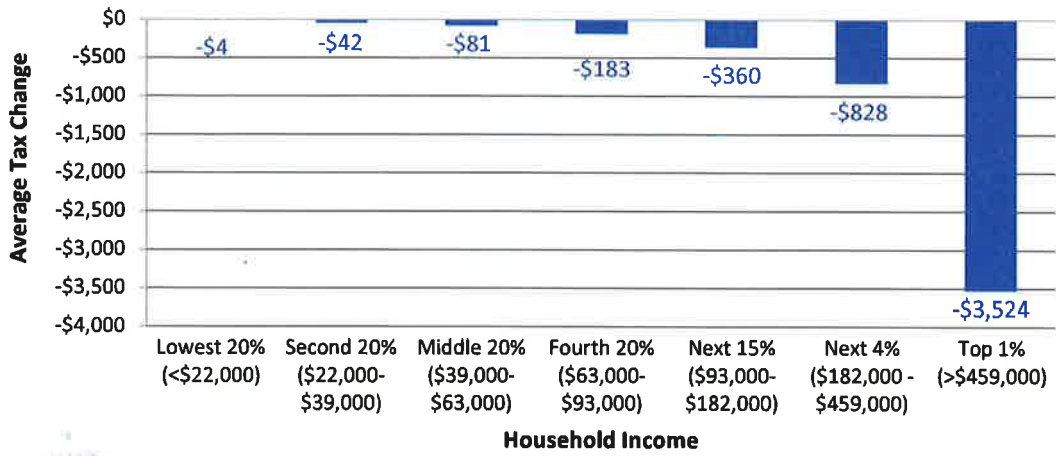
Source: Institute on Taxation and Economic Policy analysis, 2018.

**Chart 2: Idaho Households by Type of Tax Change from Full Conformity
3 or more children**



Source: Institute on Taxation and Economic Policy analysis, 2018.

Chart 3: Impact of HB463 State Individual Income Tax Rate Reductions on Idaho Households by Household Income



Source: Insitute on Taxation and Economic Policy analysis, 2018.

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, February 22, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 362</u>	Relating to Gasoline Tax Refunds	Cynthia Adrian, Idaho State Tax Commission
<u>H 363</u>	Relating to Fuels Tax	Cynthia Adrian
<u>H 452</u>	Relating to Regulation of Short-term Rentals	Representative Nate
<u>H 513</u>	Relating to Tax Exemptions; Free and Charitable Clinics	Representative Kauffman

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Thursday, February 22, 2018
- TIME:** 3:00 P.M.
- PLACE:** Room WW53
- MEMBERS PRESENT:** Chairman Johnson, Vice Chairman Bayer, Senators Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye
- ABSENT/ EXCUSED:** Senator Hill
- NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Vice Chairman Bayer** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:02 p.m.
- H 362** **Relating to Gasoline Tax Refunds. Cynthia Adrian**, Tax Policy Specialist, Idaho State Tax Commission (Commission), presented **H 362**. Idaho Code § 63-2410 requires a taxpayer who does not file an income tax return, but qualifies for a refund for non-taxable use of tax-paid gasoline, to file a refund request on a calendar year basis. School districts and other nonprofit organizations do not follow a calendar year. **Ms. Adrian** explained that **H 362** will remove the requirement to file requests for fuel tax refunds on a calendar year basis. This change would provide flexibility for these entities to file on their normal year end.
- MOTION:** **Senator Nye** moved to send **H 362** to the floor with a **do pass** recommendation. **Chairman Johnson** seconded the motion. The motion carried by **voice vote**.
- H 363** **Relating to Fuels Tax. Ms. Adrian** presented **H 363**. This legislation proposes to clarify that a distributor may collect fuels taxes when making bulk sales of gaseous special fuels. This will not require taxpayers to change how they file or collect taxes; the same amount of tax is due. **Ms. Adrian** explained this clarification simply provides users of bulk gaseous fuels the option to pay tax at the time of delivery.
- MOTION:** **Chairman Johnson** moved to send **H 363** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.
- H 452** **Relating to Regulation of Short-term Rentals. Representative Nate** presented **H 452**. He explained that 2017 HB 216 created a mechanism for short-term and vacation rental marketplaces to collect and remit applicable taxes. **Representative Nate** stated that existing language in Idaho Code § 67-6539 is problematic for two reasons: 1.) the phrase "throughout the jurisdiction of such" creates the possibility of prohibiting short-term rentals in some communities; and 2.) the phrase "notwithstanding the foregoing prohibition" provides a loophole to allow prohibitive regulations by a community. **H 452** proposes to remove these phrases from Idaho Code § 67-6539. **Representative Nate** felt this will help eliminate ambiguity and align statute with the original intent of the law.
- MOTION:** **Senator Rice** moved to send **H 452** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

H 513

Relating to Tax Exemptions for Free and Charitable Clinics. Representative Kauffman presented **H 513**. This legislation will provide a sales and use tax exemption for sales to, or purchased made by, the Idaho Association of Free and Charitable Clinics (IAFCC) and its member clinics. There are currently ten members of the IAFCC. **Representative Kauffman** stated the proposed tax exemption will help Idaho's free medical clinics provide additional products and services to indigent patients. The proposed exemption will also help decrease indigent health care expenses paid by counties and the State. **Representative Kauffman** discussed the fiscal impact to local governments and to the General Fund.

TESTIMONY:

Arnie Walker, President of the IAFCC, spoke in support of **H 513**. **Mr. Walker** explained that membership to the IAFCC requires clinics to improve the overall health and well-being of medically underserved persons, provide a variety of free and charitable primary health care services, and use primarily volunteer providers. **Mr. Walker** said bylaws were created to specify what types of organizations qualify for IAFCC membership; this was done to ensure that only clinics meeting specific requirements were eligible for a tax exemption. **Mr. Walker** noted that IAFCC clinics are able to provide five dollars worth of medical care for every dollar donated to a free clinic.

Dennis Tanikuni, representing the Idaho Farm Bureau Federation (IFBF), spoke in support of **H 513**. He stated many of the IAFCC clinics are located in communities where the IFBF has a presence.

MOTION:

Senator Burgoyne moved to send **H 513** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion passed by **voice vote**. **Senator Siddoway** requested he be recorded as voting **nay**.

ADJOURNED:

There being no further business at this time, **Vice Chairman Bayer** adjourned the meeting at 3:25 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, March 01, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 515</u>	Relating to Taxation, College Savings Plan	Christine Stoll, Executive Director, IDeal
<u>H 591</u>	Relating to Tax Exemptions for New Capital Investments	Ken McClure, UAMPS
<u>H 592</u>	Relating to Tax Exemptions for the Idaho National Laboratory	Ken McClure
Minutes Approval	Minutes of February 13, 2018	Senators Hill and Vick
	Minutes of February 14, 2018	Senators Siddoway and Rice

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson	Sen Vick
Vice Chairman Bayer	Sen Patrick
Sen Hill	Sen Burgoyne
Sen Siddoway	Sen Nye
Sen Rice	

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 01, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Siddoway, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: Senators Hill and Rice

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** convened the meeting of the Local Government and Taxation Committee (Committee) at 3:00 p.m.

H 515 **Relating to Taxation, College Savings Plan. Christine Stoll**, Executive Director, IDeal College Savings Program, presented **H 515**. **Ms. Stoll** explained IDeal is Idaho's State-sponsored college savings program. The purpose of the program is to provide a taxpayer-friendly mechanism for individuals and families to save for higher education. **Ms. Stoll** explained that nonqualified withdrawals are disbursements from 529 accounts that are used for non-educational purposes. The federal government taxes these types of withdrawals differently than the State.

H 515 seeks to amend Idaho Code § 63-3022(o) to apply tax to the earnings portion only of the amount withdrawn, and only when no state tax deduction was previously taken. If a state tax deduction was taken, the State may recapture the previously exempted principal amount, as well as apply tax to the earnings portions. Under current statute, the State taxes the entire withdrawal, regardless of whether a tax deduction was taken. **Ms. Stoll** pointed out this creates a circumstance of double taxation for Idaho families.

The second proposed change pertains to rollover funds into a 529A: Achieving a Better Life Experience (ABLE) account. **Ms. Stoll** explained that the Tax Cuts and Jobs Act allows taxpayers to rollover funds from a qualified 529 plan into an ABLE account. **H 515** seeks to amend Idaho Code § 63-3022(p) to require a two-year recapture on a roll out to an ABLE program when a state tax deduction was taken. The intent is to prevent the use of a qualified 529 program as a way to receive a state tax deduction for an ABLE account.

DISCUSSION: **Senator Siddoway** asked Ms. Stoll to distinguish between 529 programs and similar programs administered by financial planners. **Ms. Stoll** explained that 529 programs are governed by a State entity, as required by federal law. The IDeal College Savings Program is Idaho's only State-sponsored 529 program. Plans that are administered by financial planners are not affiliated with IDeal, and contributions to such plans are not eligible for a state tax deduction. **Senator Siddoway** sought clarification regarding the two-year recapture of contributions rolled into an ABLE account. **Ms. Stoll** replied that the two-year recapture applies to the tax deduction portion of the rollover, which aligns with the current treatment of rollouts to other 529 programs. **Senator Siddoway** then asked her to explain how to enroll in the IDeal program. **Ms. Stoll** explained that registration with IDeal is completed online. Taxpayers may elect to take a deduction on these contributions, which must be made by December 31, when filing their annual tax return.

Chairman Johnson asked why the federal government institutes a ten percent penalty for a qualified withdrawal. **Ms. Stoll** surmised the intent is to encourage the use of these funds for educational purposes.

MOTION:

Senator Siddoway moved to send **H 515** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion passed by **voice vote**.

H 591

Relating to Tax Exemptions for New Capital Investments. **Ken McClure**, representing Utah Associated Municipal Powers Systems (UAMPS), presented **H 591**. **Mr. McClure** briefly outlined the project being implemented at the Idaho National Laboratory (INL) through a partnership between UAMPS, INL, and the United States Department of Energy. The project will deploy the new technology of small modular reactors developed by NuScale Power, which is undergoing the process of federal licensure for commercial use. **Mr. McClure** commented this project will provide the opportunity to incentivize the construction of large facilities with significant capital expenditure in Idaho. Under current law, the assessment for an investment of at least \$1 billion in real and personal property, made within a seven-year period, is capped at \$400 million.

H 591 seeks to make three changes to Idaho Code § 63-4502 pertaining to tax exemptions for new capital investments of at least \$1 billion, which include: 1.) to add operating property to the definition of qualifying new capital investment that is exempt from taxation; 2.) to require the beginning of the qualifying period to start with the issuance of a building permit, rather than the first inspection of the property; and 3.) to include property and fixtures that are constructed off site, and installed on site, as qualifying investment. **Mr. McClure** stated nuclear reactors in this instance will be made in a factory, then shipped to and installed on-site.

DISCUSSION:

Senator Siddoway expressed concern about the qualifying period beginning with the issuance of a building permit. **Mr. McClure** responded that exemption for new capital investments is distinct from other similar exemptions. He felt that much of the investment in a multi-billion dollar project is in the construction. The exemption should include the costs of the project in its entirety, rather than the portion incurred after the first inspection. **Senator Siddoway** said requiring a company to petition for reimbursement for taxes paid after project completion is a more appropriate approach. **Mr. McClure** acknowledged reluctance for creating new incentives in this regard. This proposal is an attempt to work within the existing framework of the law.

Chairman Johnson asked Mr. McClure to analyze how this exemption will be applied annually for the first five years. **Mr. McClure** responded the tax exemption will not be applied until the project reaches \$1 billion in assessed valuation; additional increments above that do not go into the tax base.

MOTION:

Senator Siddoway moved to send **H 591** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion passed by **voice vote**.

H 592

Relating to Tax Exemptions for the Idaho National Laboratory. **Ken McClure** presented **H 592**. This legislation seeks to amend Idaho Code § 63-3622BB to clarify provisions of the sales tax exemption for research and development activities conducted at INL. **Mr. McClure** stated the proposed facility will be partially used for research and development, but mostly used for power production. Under current law, the existing sales tax exemption for research facilities at INL will no longer be available. **Mr. McClure** indicated two of the twelve modular reactors will be used for research and development purposes. This bill seeks to clarify that the portion of the facility used for research and development will continue to be exempt from sales tax, even though it is not the primary use of the property.

- TESTIMONY:** **Liz Paul**, representing the Snake River Alliance, spoke in opposition to **H 591** and **H 592**. **Ms. Paul** argued nuclear power is a dying industry that should not be subsidized by Idaho taxpayers. Nuclear reactors are water-intensive, which will significantly impact water resources in agricultural communities. Additionally, she felt that a sunset provision should be added to the proposed tax exemption for research and development activities at INL.
- DISCUSSION:** **Chairman Johnson** asked Ms. Paul to comment on the role of nuclear energy and carbon-free energy sources. **Ms. Paul** commented on the environmental and economic impacts of nuclear energy versus other renewable energy sources. She asserted that nuclear energy is not a viable long-term energy source.
- Senator Patrick** asked how nuclear reactors process water. **Ms. Paul** did not provide a technical explanation but stated that water rights should be allocated for this particular use.
- TESTIMONY:** **David Monsees**, representing himself as an Idaho citizen, spoke in opposition to **H 591** and **H 592**. He commented on the safety of nuclear reactors and the effects of nuclear waste in general.
- DISCUSSION:** **Senator Nye** asked Mr. Monsees to comment on the tax implications of the proposed legislation. **Mr. Monsees** said that, even with federal subsidies, nuclear energy is an expensive option for consumers. He also questioned the overall viability of the project.
- Senator Nye** thanked the Snake River Alliance for their testimony and acknowledged the concerns raised during testimony. He clarified that **H 591** and **H 592** do not address safety or regulatory issues regarding nuclear power; the application of tax is the only issue under consideration.
- TESTIMONY:** **Mr. McClure** returned to the podium to comment on technical considerations of the proposed project. He stated that the small modular reactors being developed use substantially less water than traditional reactors. These reactors do not require large cooling towers to steam off excess water.
- Bob Temple**, General Counsel, NuScale Power, addressed questions regarding the enrichment of uranium. He stated these reactors will use low-enriched uranium; the United States Nuclear Regulatory Commission is currently evaluating the safety of the reactors before design approval. **Mr. Temple** asserted these reactors will be significantly safer than other nuclear technology currently in operation. He also provided that the reactors will use substantially less water than larger facilities.
- DISCUSSION:** **Senator Vick** asked if solar power is less expensive than nuclear power. **Mr. Temple** replied that solar power is not less expensive. To provide energy 24 hours per day, a solar field requires a natural gas plant. Consumers ultimately pay for infrastructure for two separate systems. The proposed nuclear technology, according to **Mr. Temple**, is a more viable source of carbon-free electricity than solar energy. **Senator Vick** asked for a relative cost comparison. **Mr. Temple** explained, given the costs of additional infrastructure for solar power, nuclear energy is approximately half the cost of solar energy.
- Vice Chairman Bayer** recognized the value of research and development in this regard, which has a broader application than simply power production. He commented this legislation will facilitate the partnership between public and private entities, and such partnership is vital for the development of technology.
- MOTION:** **Vice Chairman Bayer** moved to send **H 592** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Vick moved to approve the Minutes of February 13, 2018. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

Senator Siddoway moved to approve the Minutes of February 14, 2018. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:15 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Tuesday, March 06, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 524</u>	Relating to Fire Protection Districts	Representative Vander Woude
<u>H 518</u>	Relating to Recorder's Fees	Representative Blanksma
<u>H 492</u>	Relating to Property Tax Relief for Certain Disabled Veterans	Representative Giddings
<u>H 514</u>	Relating to Taxation of Capital Gains	Ken McClure, Idaho Society of CPAs
Minutes Approval:	Minutes of February 20, 2018	Senator Patrick and Vice Chairman Bayer

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 06, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, and Nye

ABSENT/ EXCUSED: Senator Burgoyne

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 524 **Relating to Fire Protection Districts.** **Senator Den Hartog** presented **H 524**. This legislation seeks to amend Idaho Code § 31-1420 to allow fire protection districts to exchange real property for other real property of equivalent value, as determined by a fire protection district board of commissioners. The bill also permits fire protection districts to sell the property.

DISCUSSION: **Senator Hill** asked how this legislation would apply to the exchange of property that was not equivalent in value. **Senator Den Hartog** replied this legislation would apply only to the exchange of property of equivalent value.

Senator Rice asked if it would be appropriate to add language to allow properties that are not equal in value to be exchanged, using a combination of real estate and cash. **Senator Den Hartog** affirmed.

TESTIMONY: **Bud Beatty**, representing the Idaho State Fire Commissioners' Association (ISFCA), spoke in support of **H 524**. **Commissioner Beatty** said the ISFCA believes this legislation provides flexibility in the exchange of property in this circumstance.

DISCUSSION: **Senator Rice** agreed with the underlying intent of the bill, but stated the language restricts the exchange of real property to property of equivalent value only. He suggested language to ensure that property in this instance can be exchanged for a combination of real property and cash to make up the equivalent value.

MOTION: **Senator Rice** moved to send **H 524** to the 14th Order for possible amendment. **Senator Hill** seconded the motion.

DISCUSSION: A discussion ensued regarding the intent of **H 524**. **Representative Vander Woude** stated the intent is to allow the exchange of real property for other real property. He expressed concern regarding a potential cash balance that may be incurred from the exchange of properties of different values. **Senator Hill** acknowledged these concerns, and while he felt the proposed amendment will lend flexibility to the exchange of property under certain circumstances, he stated he will defer to the judgment of the bill sponsor.

Senator Hill withdrew his second of the motion. **Senator Rice** withdrew his motion.

MOTION: **Senator Siddoway** moved to send **H 524** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

- H 518** **Relating to Recorder's Fees. Representative Blanksma** presented **H 518**. **Representative Blanksma** explained this legislation will provide clarification to 2017 HB 205 regarding recording fees for certain documents. She indicated that counties have not been consistent in their application of recording fees for documents exceeding 30 pages. This legislation proposes to amend Idaho Code § 31-3205 to clarify that recording fees for each additional page beyond 30 pages is \$3. **Representative Blanksma** reported the Idaho Land Title Association and the Idaho Association of Counties support this legislation.
- MOTION:** **Senator Vick** moved to send **H 518** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.
- H 492** **Relating to Property Tax Relief for Certain Disabled Veterans. Representative Giddings** presented **H 492**. This legislation proposed to provide a \$1,320 property tax reduction for Idaho veterans who have a 100 percent service-connected disability; the tax reduction may not exceed the amount of a veteran's property tax. **Representative Giddings** explained a surviving spouse may receive the benefit, but it will not extend to children. The proposed exemption is separate from the Circuit Breaker Property Tax Reduction (PTR) program because it is not based on income. **Representative Giddings** stated there are approximately 27,000 disabled veterans in Idaho; 2,067 of these veterans are 100 percent service-connected disabled. The Idaho State Tax Commission (Commission) estimates 960 new claims under this proposal.
- DISCUSSION:** **Senator Patrick** asked how this legislation will apply to spouses of veterans. **Representative Giddings** replied that a surviving spouse will be eligible for the tax reduction. If the property is held in a trust or there exists a circumstance of partial ownership, the tax reduction will apply to the portion of property owned by the spouse.
- Senator Hill** sought clarification regarding the fiscal note. **Representative Giddings** indicated the Commission based the estimate of \$900 per claim on average home values in Idaho.
- TESTIMONY:** The following individuals spoke in support of **H 492**: **Henry Parker, R.J. Thomas, Steve Neff, Tim McBride, Denny Croner, Ian Freeman, Julie Hart, and George Schnarre**.
- DISCUSSION:** **Representative Giddings** returned to the podium to provide closing comments. **Senator Nye** asked if a surviving spouse may be eligible for the proposed reduction if the veteran is deceased. **Representative Giddings** replied this proposal administers a tax reduction in the same manner as the Circuit Breaker PTR program, which requires a veteran to apply each year. She said allowing retroactive application may be considered in the future.
- Senator Hill** asked how disability ratings are determined. **Representative Giddings** explained the process, which is administered primarily through the United States Department of Veterans Affairs (VA). Documentation is provided by the VA for veterans to use when applying for benefits.
- MOTION:** **Senator Hill** moved to send **H 492** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.
- H 514** **Relating to Taxation of Capital Gains. Ken McClure**, representing the Idaho Society of Certified Public Accountants, presented **H 514**. This legislation seeks to align Idaho tax code with the Internal Revenue Code (IRC) regarding taxation of capital gains. Under the IRC, real estate held in a partnership or limited liability company (LLC) qualifies for long-term capital gain treatment if it meets certain requirements. If those requirements are met, a taxpayer may deduct 60 percent of the gain.

Idaho treats the sale of such real estate as one of intangible property rather than real property. **Mr. McClure** explained, in order for Idaho taxpayers to qualify for capital gains treatment, they must distribute the property to the partners and tenants in common (TIC), who then sell the TIC interests. He indicated the uninformed taxpayer is often caught unaware in these circumstances.

Mr. McClure then discussed the fiscal note. He stated the Commission does not have data from which to estimate fiscal impact in this regard because such instances are rare. As such, the projected fiscal impact was based on the judgment and experience of tax professionals. He said the actual revenue reduction will likely be less than \$500,000.

TESTIMONY: **Matthew Grow** and **Mike Lindstrom** spoke in support of **H 514**.

DISCUSSION: **Mr. McClure** returned to the podium to provide closing comments. **Senator Hill** asked Mr. McClure to provide examples of how capital gains attributable to qualified real property may be determined under this proposal. **Mr. McClure** assured the Committee he would provide this information.

MOTION: **Senator Hill** moved to send **H 514** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:05 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Wednesday, March 07, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 624</u>	Relating to Taxes, Trailer Bill	Tom Shaner, Idaho State Tax Commission
<u>H 568</u>	Relating to Initiatives and Referendum Procedures	Senator Anthon
Minutes Approval:	Minutes of February 22, 2018	Senators Nye and Burgoyne

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, March 07, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:01 p.m.

H 624 **Relating to Taxes, Trailer Bill. Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented **H 624**. This is a trailer bill to 2018 HB 355, which conforms Idaho income tax code to the Internal Revenue Code (IRC). Idaho income tax code is currently aligned with the IRC as of December 21, 2017, for tax year 2017.

H 624 will conform the Idaho income tax code to changes made to the IRC, resulting from the Bipartisan Budget Act of 2018, which was enacted in February 2018.

Mr. Shaner explained this bill seeks to amend Idaho Code § 63-3004 to extend the sunset dates of 11 deductions to which Idaho has previously conformed. The estimated fiscal impact is a \$4.2 million reduction in General Fund revenue that affects tax year 2017 only. He briefly described three deductions that constitute the majority of the fiscal note.

DISCUSSION: **Senator Hill** asked Mr. Shaner to provide a description of each deduction that will be amended, and to delineate the fiscal impact of each. **Mr. Shaner** assured the Committee he would provide that information prior to floor debate.

MOTION: **Vice Chairman Bayer** moved to send **H 624** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 568 **Relating to Initiatives and Referendum Procedures. Senator Anthon** presented **H 568**. **Senator Anthon** stated this legislation will address the protection of property rights in land use decisions. City councils and county commissions make decisions regarding land use decisions; such authority is mandated by the Local Land Use Planning Act (LLUPA). **Senator Anthon** explained when a city council or county commission makes a general rule that is widely applicable, it serves as a legislative function. When a land use decision has specific applicability, it serves as a quasi-judicial function. In this role, cities and counties must meet specific requirements set forth in statute.

Senator Anthon noted the courts have held that land use decisions cannot be determined through initiative or referendum. **Senator Anthon** referenced *Gumprecht v. City of Coeur d'Alene*, in which the Idaho Supreme Court held that local zoning ordinances cannot be amended through initiative, and by extension, referendum elections; such action would be incompatible with statutory procedures mandated by LLUPA.

Senator Anthon stated current county statute is ambiguous in terms of when an initiative or referendum process can be brought forth; city statute is clear on this issue. **H 568** proposes the following: 1.) to repeal Idaho Code § 31-717, the current state law governing the county initiative and referendum process; 2.) to align the county initiative and referendum process with current State and city processes found in Idaho Code, Title 18, Chapter 34; 3.) to codify *Gumprecht v. City of Coeur d'Alene* in sections of Idaho Code pertaining to city and county initiative and referendum law; and 4.) to amend Idaho Code § 34-106 to clarify the dates of certain city and county initiative and referendum elections.

DISCUSSION: **Chairman Johnson** asked Senator Anthon how planning and zoning decisions may be challenged, if not through initiative or referendum. **Senator Anthon** replied there are remedies for quasi-judicial decisions through the judicial system. These matters may also be reconsidered by local units of government. **Chairman Johnson** sought clarification regarding dates of city and county referendum elections. **Senator Anthon** suggested this is a statutory clarification.

Senator Burgoyne asked Senator Anthon to discuss the scope of proposed language on page 4, lines 16-18. **Senator Anthon** stated it will apply to any land use decision of a quasi-judicial nature. **Senator Burgoyne** acknowledged the problematic nature of referenda initiated after a project has been approved. However, he expressed concern this legislation will undermine the ability of citizens to challenge general ordinances that are not quasi-judicial in nature. **Senator Anthon** replied the intent is not to limit a citizen's right to challenge an ordinance with general applicability through referendum.

Senator Hill asked for the rationale behind **H 568**. **Senator Anthon** referenced a zoning dispute in Ada County that brought these issues to light. However, he stated this legislation will not affect the case in question because the bill will not have retroactive application.

Senator Burgoyne referenced the proposed repeal of Idaho Code § 31-717, the current state law governing the county initiative and referendum process. If this legislation is approved, he asked what statute will govern the county referendum process. **Senator Anthon** responded this legislation, if approved, will not take away the ability to advance a referendum; it affects when a referendum is allowed to take place.

TESTIMONY: The following individuals spoke in support of **H 568**: **Cameron McFadden, John Wardle, Jared Doty, Ben Kalkman, Josh Cummings, Quint Whitman, Russ Hendricks, Bob Ginkel, James Hunter, Ax Yewer, David Yorgason, David Paul, Scott Gibson, Julie DeLorenzo, Mike Kane, Hethe Clark, John Eaton, and Trent Wright.**

The following individuals spoke in opposition to **H 568**: **Leslie Nona, Eric Lecht, Richard Llewellyn, Stephanie Rael, Kris Grimshaw, Keith Walklet, Brian Ertz, Katie Fife, and Lori Dicaire.**

Stephanie Rael, representing the Dry Creek Valley Coalition, spoke in opposition to **H 568**. She described the Dry Creek Valley referendum and her organization's efforts to challenge a zoning ordinance in Ada County. **Ms. Rael** commented the referendum process provides citizens with a voice in the land planning process; in her opinion, **H 568** will prevent citizen participation in this regard.

DISCUSSION: A discussion ensued regarding the Dry Creek Valley Coalition's petition for referendum. **Ms. Rael** spoke about administrative time extensions provided by Ada County during the course of this process. She indicated after Ada County initially approved the project, a significant amount of time lapsed before a different developer used the initial application to put forth a different plan.

Chairman Johnson asked if mediation with Ada County was considered. **Ms. Rael** stated a mediation request was submitted by the Dry Creek Valley Coalition and subsequently denied by Ada County.

Senator Burgoyne asked if the Dry Creek Valley Coalition is currently involved in litigation. **Ms. Rael** affirmed. She outlined the actions of her organization in this regard.

TESTIMONY: **James Hunter**, representing Boise Hunter Homes, spoke in support of **H 568**. He stated Boise Hunter Homes followed county zoning procedures, which included public hearings, and received county approval for their development project, the Dry Creek Ranch subdivision. **Mr. Hunter** asserted the Dry Creek Valley referendum has specific applicability, thus making it a quasi-judicial matter that should be appealed through the courts.

DISCUSSION: **Senator Burgoyne** asked if Boise Hunter Homes is currently involved in litigation. **Mr. Hunter** affirmed. **Senator Burgoyne** asked Mr. Hunter what he hopes this legislation will achieve. **Mr. Hunter** was unsure how this legislation will impact the project in question. He supports this legislation because it will provide overall stability and predictability within the real estate development industry.

Chairman Johnson asked the significance of 20 signatures on a petition for referendum. **Mr. Hunter** stated, in Ada County, a ballot initiative may begin after 20 signatures are collected.

TESTIMONY: **Ax Yewer**, Ada County Deputy Prosecuting Attorney, spoke in support of **H 568**. **Mr. Yewer** explained the significance of the *Gumprecht* case as it applies to this bill. He emphasized the provisions of this legislation will not be retroactive. **Mr. Yewer** also commented on the application of this legislation to ongoing litigation. He said the court has determined that new laws cannot be applied that will affect the vested rights established by statute at the start of the litigation.

DISCUSSION: **Senator Burgoyne** asked a series of questions regarding the scope of **H 568**. **Mr. Yewer** stated legislative ordinances have general applicability to all properties within a specified area; quasi-judicial ordinances have applicability to a specific property within a specified area. The new language proposed on page 4, lines 16-18, applies to both types of ordinances. **Senator Burgoyne** asked what statute will govern the referendum process if Idaho Code § 31-717 is repealed. **Mr. Yewer** replied the referendum process will not be affected because the new section being proposed references Title 34, Chapter 18, which governs these processes.

Senator Rice asked if the developer, who obtained project approval from a county, now has a vested right in the development of that project. **Mr. Yewer** affirmed. The Idaho Supreme Court held, when an application is approved for a development project, developers have a vested right to continue the project according to the zoning ordinance that is in place at the time of approval.

Chairman Johnson asked why the dates of city and county referendum elections are different. **Mr. Yewer** replied this was a statutory clarification.

TESTIMONY: **Hethe Clark**, an attorney representing Boise Hunter Homes, spoke in support of **H 568**. **Mr. Clark** asserted that a right to initiative or referendum, in the case of the Ada County land use dispute, does not exist for two reasons. First, most land use cases are quasi-judicial and do not fall within the bounds of Idaho Code § 31-717 or the Idaho Constitution. Second, the *Gumprecht* case held that direct legislation cannot satisfy the procedural requirements of LLUPA.

DISCUSSION: **Senator Rice** asked, because the *Gumprecht* case held that local initiatives are inconsistent with LLUPA, if a statewide initiative would be required to resolve a disagreement with LLUPA. **Mr. Clark** affirmed. A statewide initiative is required to modify state statute rather than a requirement of a local jurisdiction.

Senator Burgyone asked, in response to Mr. Clark's assertion there is no right to an initiative or referendum with respect to land use planning act issues, why this legislation is necessary. **Mr. Clark** replied the intent of this legislation is to confirm the legal precedent set by the *Gumprecht* case, which held that zoning ordinances may not be amended, modified, or repealed through referenda or initiatives.

ADJOURNED: **Chairman Johnson** stated the Committee will continue its consideration of **H 568** at the next meeting. There being no further business at this time, **Chairman Johnson** adjourned the meeting at 5:10 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AMENDED AGENDA #1
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
3:00 P.M.
Room WW53
Thursday, March 08, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 568</u>	Relating to Initiatives and Referendum Procedures	Senator Anthon
<u>H 453</u>	Relating to Adoption Expenses	Representative Moyle
<u>H 559</u>	Relating to Tax Exempt Property	Representative Moyle
<u>H 578</u>	Relating to Sale and Use Tax	Representative Clow
<u>H 567aa</u>	Relating to Cemetery Maintenance Districts	Representative Troy
Minutes Approval:	Minutes of February 22, 2018	Senators Nye and Burgoyne

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson
Vice Chairman Bayer
Sen Hill
Sen Siddoway
Sen Rice

Sen Vick
Sen Patrick
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Jennifer Carr
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Phone: 332-1315
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MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 08, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 568 **Relating to Initiatives and Referendum Procedures.** **Senator Anthon** provided closing comments regarding **H 568**. He stated this legislation would apply to any Local Land Use Planning Act (LLUPA) proceeding which requires process, because a voter initiative or referendum cannot happen in those instances without circumventing statute that requires it. This is what the Supreme Court of Idaho held in *Grumpecht v. City of Coeur d'Alene* and what is being codified in this bill. By codifying these concepts, the Legislature will provide clarity of the law in this regard.

Senator Anthon responded to questions regarding the scope and applicability of **H 568**. He stated this legislation would not be retroactive; he referenced Idaho Code § 73-101, which holds that a statute is not retroactive unless explicitly written as such. In addition, **Senator Anthon** referenced case law which held the law in effect at the time of filing is the law applied to the case. For these reasons, he expressed confidence this bill would not affect ongoing litigation.

DISCUSSION: A discussion ensued regarding the Dry Creek Valley Coalition referendum petition (*Dry Creek Valley Coalition v. Rich.*) **Senator Burgoyne** noted the Ada County ordinance governing referenda does not include a provision that allows a county clerk to reject a referendum petition. This makes it a county issue, rather than a statewide problem. **Senator Burgoyne** asked why not change the county ordinance to grant a county clerk such authority, rather than amend State law. **Senator Anthon** responded the central issue, in his opinion, has broader applicability because of the ripeness issue. He questioned why an initiative or referendum should be allowed to repeal or amend a zoning designation that has already been approved.

Senator Rice commented the courts have held that local land use decisions cannot be challenged through initiative or referendum. Such prohibition does not prevent statewide initiatives, but local initiatives and referenda cannot override State law. **Senator Rice** said it is within the authority of the Legislature to codify legal precedent and provide clarity on this issue. This clarification will ensure citizens do not go through the expense of challenging this again in court.

MOTION: **Senator Rice** moved to send **H 568** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

DISCUSSION: **Senator Patrick** said he will support the motion. He commented, in his experience, uncertainty in the real estate development industry is a detriment to project funding and development.

Senator Burgoyne argued the issue addressed in this legislation is a local issue; it can be resolved if Ada County passes an ordinance that empowers a county clerk to reject petitions. **Senator Burgoyne** was uncertain of the motive behind this bill, citing inconsistent statements made during testimony regarding the Dry Creek Valley referendum petition.

SUBSTITUTE MOTION:

Senator Burgoyne moved that **H 568** be held in Committee. The motion failed due to lack of a second.

DISCUSSION:

Senator Hill stated support for the original motion. He acknowledged the efforts of citizens to use the referendum process to address a planning and zoning decision they felt strongly about. **Senator Hill** commented this legislation would codify legal precedent on this issue, and would provide clarity for citizens seeking similar redress.

Senator Rice recognized there are ambiguities within State law. He commented **H 568** seeks to address such ambiguity regarding the initiative and referendum processes, and would provide clarity for citizens in this regard.

Chairman Johnson asked Senator Anthon to distinguish between passing a zoning ordinance that restricts or eliminates a currently existing property right, and repealing a zoning ordinance that granted a new right or amended a preexisting right. **Senator Anthon** replied, in his opinion, it is difficult to make the distinction. For instance, the elimination of residential zoning of a property may subsequently result in zoning for commercial use. **Chairman Johnson** commented by enacting LLUPA, the Legislature removed from the people the ability to make zoning decisions. This is the central issue, not necessarily whether zoning ordinances can be challenged through initiative or referendum. **Chairman Johnson** acknowledged the people's efforts to challenge a land use decision, and recognized the broader significance of these issues.

ROLL CALL VOTE ON ORIGINAL MOTION:

A roll call vote was requested. **Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick** and **Nye** voted **aye**. **Chairman Johnson** and **Senator Burgoyne** voted **nay**. The motion carried.

H 453

Relating to Adoption Expenses. Representative Moyle presented **H 453**. This legislation proposes to amend Idaho Code § 63-3022I to increase the amount of adoption expenses which can be used as an income tax deduction, from \$3,000 to \$10,000. Such expenses may include legal fees, medical expenses, and other costs incurred through the adoption process; travel expenses are not included. **Representative Moyle** reported the bill caps the deduction at \$10,000.

DISCUSSION:

Senator Burgoyne asked when the \$3,000 tax deduction was added to statute. **Representative Moyle** reported the deduction was added in 1994.

MOTION:

Senator Vick moved to send **H 453** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 559

Relating to Tax Exempt Property. Representative Moyle presented **H 559**. This legislation would provide for a provisional property tax exemption on property that is under construction for a tax-exempt purpose. **Representative Moyle** outlined how tax-exempt property is currently assessed, and how property taxes are applied to such property during and after construction. He stated the current process is not uniformly followed by county assessors and may result in a shift of property taxes to other taxpayers.

H 559 proposes to address these inconsistencies. **Representative Moyle** explained this legislation will allow a property owner to apply for a provisional tax exemption when they apply for a building permit. If approved, the property will not be included on the county assessor's new construction roll. Once construction is complete, the county will review the tax-exempt status of the property. If the property does not qualify for the tax exemption at that time, the property owner will be liable for back taxes that would have been due during construction.

DISCUSSION: **Vice Chairman Bayer** asked why a property's tax-exempt status is not clearly determined prior to construction. **Representative Moyle** explained there is inconsistency among counties in how this exemption is applied. For instance, a tax-exempt entity may not take ownership of the property until construction is completed. An assessor may assume, because the property is not yet being used for a tax-exempt purpose during construction, that its value should be added to the new construction roll. **Representative Moyle** indicated the issue was brought to light with Idaho Supreme Court's decisions regarding Jack's Urban Meeting Place (JUMP). The court held JUMP was not exempt from taxation during construction because it was not being used exclusively for charitable purposes during that time.

Senator Hill asked what the practical effect will be to Idaho counties by making this legislation retroactive to January 1, 2016. **Representative Moyle** replied the intent was to incorporate the 2016 Idaho Supreme Court decision regarding JUMP, and to provide consistency Statewide moving forward.

Senator Burgoyne asked for more clarification regarding potential refunds of property tax payments. **Representative Moyle** responded taxpayers may appeal to the county board of commissioners for a refund of property taxes imposed during construction of a tax-exempt property.

Senator Nye sought clarification of the fiscal note. **Representative Moyle** provided there may be a fiscal impact to local governments should a tax-exempt entity apply for a refund. However, he believes this will have future application. There will be no impact to General Fund revenue.

TESTIMONY: **John Eaton**, representing the Idaho Association of Commerce and Industry, spoke in support of **H 559**.

DISCUSSION: **Representative Moyle** provided closing comments. He emphasized this bill proposes to require the board of county commissioners to review the tax-exempt qualifications of a provisional property after construction is complete. Most counties already follow this procedure; this bill would provide Statewide clarity on this issue.

Vice Chairman Bayer commented there may be some discretion in regard to existing tax liability from these situations. He asked how this language may affect county budgeting. **Representative Moyle** surmised the budget implications will be minor because these incidences are infrequent. The implications to counties will not be fully realized until the legislation takes effect.

MOTION: **Senator Siddoway** moved to send **H 559** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 578 **Relating to Sales and Use Tax.** **Representative Clow** presented **H 578**. This legislation seeks to amend Idaho Code § 63-3611, which pertains to retailers engaged in business in the State of Idaho. **Representative Clow** stated this legislation proposes to expand this definition to include out-of-state retailers engaged in business with one or more individuals in this State, and that generate at least \$10,000 annually in sales through Idaho-affiliated businesses. This legislation proposes to also provide a mechanism for a retailer to dispute their tax liability with the Idaho State Tax Commission (Commission).

Representative Clow explained a retailer, whether through online sales or in brick-and-mortar stores, must collect and remit tax on sales made through an affiliate to an Idaho consumer. Retailers who are not selling through affiliates will not be held to the same requirement. **Representative Clow** also discussed the difficulties of determining the fiscal impact of this legislation. He explained how the \$22 million to \$37 million range of potential impact to the State was determined.

DISCUSSION: **Senator Burgoyne** asked a series of questions regarding nexus and scope of this legislation. **Representative Clow** explained if a business in another state utilizes the services of an affiliate in selling its products, it creates a nexus through affiliation with a business in Idaho. He reported some online marketplaces already collect and remit sales tax on their own accord, and it is difficult to determine which retailers are doing so.

Senator Hill asked if other states have enacted similar legislation that was subsequently challenged in court. **Representative Clow** referenced court cases pertaining to this issue. Courts have held if a nexus is established, out-of-state retailers must collect sales and use tax on sales to customers in that state.

Senator Siddoway asked questions regarding affiliation as it pertains to this legislation. **Representative Clow** explained if an out-of-state retailer sells products to consumers in Idaho, but does not rely on an affiliate, the retailer will not be required to collect sales tax on those transactions. However, if an out-of-state retailer sells product in Idaho through an affiliated business in the State, and those transactions generate at least \$10,000, the retailer will be required to collect sales tax on those transactions.

Senator Vick asked how the \$10,000 threshold was determined. **Representative Clow** replied this threshold has been used by other states. **Senator Vick** asked for an example of an indirect retail agreement. **Representative Clow** said this was included to cover unexpected retail transactions. **Senator Vick** then asked how these provisions will be enforced. **Representative Clow** stated the legislation does not address enforcement; the Commission will handle these issues as part of their course of business.

TESTIMONY: **John Watts**, Idaho Chamber Alliance, **Pam Eaton**, Idaho Retailers Association, and **John Eaton**, Idaho Association of Commerce and Industry, spoke in support of **H 578**.

DISCUSSION: **Senator Vick** asked Tom Shaner, Tax Policy Manager with the Commission, to comment on enforcement of these provisions. **Mr. Shaner** stated the Commission has auditing and enforcement tools available, to the extent the Commission is able to identify retailers engaged in this activity. **Senator Vick** asked if the Commission expects voluntary compliance with these provisions. **Mr. Shaner** said the Commission can send an audit notice to an out-of-state business, but there are practical limitations to such a practice.

Vice Chairman Bayer asked how this legislation may affect subsequent rulemaking. **Mr. Shaner** did not foresee difficulties regarding implementation.

Representative Clow returned to the podium to provide closing comments. He commented this legislation requires a certain level of voluntary compliance, and predicted retailers will adapt accordingly to the law. **Representative Clow** concluded this legislation is timely and the appropriate way to address the changing nature of the Internet marketplaces.

MOTION: **Senator Nye** moved to send **H 578** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 567aa **Relating to Cemetery Maintenance Districts.** **Representative Troy** presented **H 567aa**. This legislation seeks to amend sections of Idaho Code to allow for the merger of cemetery maintenance districts throughout the State. She stated there are 183 cemetery districts in Idaho. Some of these districts are quite small and often have difficulty maintaining local cemeteries due to funding challenges and demographics. **Representative Troy** outlined the provisions of **H 567aa** that govern the procedures for consolidation of cemetery maintenance districts.

DISCUSSION: **Vice Chairman Bayer** asked a series of questions regarding cemetery districts that fall within the parameters of this legislation. **Representative Troy** stated 21 cemetery districts in Idaho have annual budgets of less than \$2,500, and 31 cemetery districts have annual budgets of less than \$3,500. She explained cemetery districts must have a ten-mile proximity, and one district must have less than 150 patrons, to be eligible for consolidation.

Senator Burgoyne asked how this legislation would apply to cemetery districts residing in multiple counties. **Representative Troy** responded the bill will allow cemetery districts to merge across county lines.

MOTION: **Senator Nye** moved to send **H 567aa** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Nye** moved to approve the Minutes of February 22, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:43 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
2:00 P.M.
Room WW53
Tuesday, March 13, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 626</u>	Relating to Elections to Authorize Bonded Indebtedness	Representative Nate
Minutes Approval:	Minutes of February 21, 2018	Senators Vick and Hill
	Minutes of March 1, 2018	Senators Siddoway and Patrick
	Minutes of March 6, 2018	Vice Chairman Bayer and Senator Nye
Page Graduation	Farewell to Paige Nelson, Senate Page	Chairman Johnson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson Sen Vick
Vice Chairman Bayer Sen Patrick
Sen Hill Sen Burgoyne
Sen Siddoway Sen Nye
Sen Rice

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 13, 2018

TIME: 2:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 2:08 p.m.

H 626 **Relating to Elections to Authorize Bonded Indebtedness. Representative Nate** presented **H 626**. This legislation proposes to amend Idaho Code § 34-439 to add a new subsection with a requirement for bond election ballot questions. The information currently provided on a bond ballot includes the amount to be bonded, the term of the bond, and the interest costs. **Representative Nate** commented this information may be difficult for the average citizen to interpret, and does not include what the bond will actually cost the taxpayer after it is passed.

H 626 would require a bond ballot to include a disclosure statement indicating the term of the bond and the estimated average annual cost to the taxpayers, per \$100,000 of taxable assessed value per year, based on current conditions. **Representative Nate** stated this legislation will ensure accurate and transparent disclosure.

DISCUSSION: **Senator Burgoyne** asked if the formula proposed for calculating the estimated average annual cost to the taxpayer will be included on a bond ballot. **Representative Nate** replied this is a description of the calculation only, and will not be printed on the bond ballot.

TESTIMONY: **Brian Stutzman**, representing himself, and **Larry Lyon**, representing himself, spoke in support of **H 626**.

MOTION: **Senator Burgoyne** moved to send **H 626** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Vick** moved to approve the Minutes of February 21, 2018. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator Siddoway moved to approve the Minutes of March 1, 2018. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Bayer moved to approve the Minutes of March 6, 2018. **Senator Nye** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** abstained from the vote, as he was absent from the relevant meeting.

PAGE GRADUATION: **Chairman Johnson** thanked Paige Nelson, Senate Page, for her service. He recognized her hard work and dedication to the Committee.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 2:25 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary

AGENDA
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE
1:00 P.M.
Room WW53
Tuesday, March 20, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 594</u>	Relating to Tax Exempt Property; Hop Crops Production Machinery	Representative Anderst
<u>H 675</u>	Relating to Taxation; Child Tax Credit	Senator Hill
<u>S 1220aaH</u>	Committee Action on House Amendment	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson	Sen Vick
Vice Chairman Bayer	Sen Patrick
Sen Hill	Sen Burgoyne
Sen Siddoway	Sen Nye
Sen Rice	

COMMITTEE SECRETARY

Jennifer Carr
Room: WW50
Phone: 332-1315
email: sloc@senate.idaho.gov

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, March 20, 2018

TIME: 1:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, and Nye

ABSENT/ EXCUSED: Senator Burgoyne

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 1:02 p.m.

H 594 **Relating to Tax Exempt Property; Hop Crops Production Machinery.** **Representative Anderst** presented **H 594**. This legislation proposes to exempt machinery and equipment used in the harvesting of hops from property taxation. **Representative Anderst** reported hop production machinery is not currently defined in statute as property exempt from taxation; this creates confusion and inconsistency in how tax is applied. To address these issues, **Representative Anderst** referenced a proposed amendment to exempt hops production machinery from property taxation for the next two years. During that time, the statutory definitions pertaining to agricultural machinery and equipment will be more clearly defined, including when harvesting ends and processing begins.

TESTIMONY: **Justin Baldwin**, representing the Idaho Association of County Assessors, spoke in opposition to **H 594**. **Mr. Baldwin** commented the proposed tax exemption is selective and will benefit only a small percentage of taxpayers. He suggested such an exemption will result in a tax shift to other taxpayers in surrounding residential areas.

DISCUSSION: **Vice Chairman Bayer** asked Mr. Baldwin to comment on the implications to shifts in tax liability as exemptions change over time, and how potential tax shifts may be avoided in the future. **Mr. Baldwin** replied taking taxable property on and off the tax roll is detrimental to local budgets. In his opinion, the property tax exemption provided for agricultural equipment has been detrimental to rural communities. The nature of the agriculture industry has evolved; as such, incremental increases of replacement dollars for rural counties are needed to sustain growth.

Senator Patrick commented property tax exemptions for agricultural equipment are beneficial to agribusiness. In his opinion, hops is no different than any other commodity and should be taxed the same way. **Mr. Baldwin** agreed. However, he argued these types of exemptions may result in a tax shift to other taxpayers.

TESTIMONY: **Diane Gooding**, representing the Idaho Hop Growers Association, spoke in support of **H 594**. **Ms. Gooding** briefly explained how hop crops are harvested and processed, and how these processes are distinct from other crops. She stated fair assessment of harvest machinery across the agriculture industry is needed.

Russ Hendricks, representing the Idaho Farm Bureau Association, spoke in support of **H 594**. **Mr. Hendricks** commented the proposed exemption would not change the original intent of the law because it would apply only to equipment used during harvesting.

Brian Stender, Canyon County Assessor, commented on **H 594**. **Mr. Stender** briefly described how Canyon County has assessed hops production equipment historically. He stated clarity is needed to ensure counties are applying property tax consistently and within the law.

Representative Anderst provided closing comments. He informed the Committee relevant stakeholders, including the Idaho State Tax Commission and industry representatives, will use the two-year working window to clearly distinguish equipment used for harvesting from equipment used for processing, and how tax may be applied in each circumstance.

MOTION: **Senator Rice** moved to send **H 594** to the 14th Order for possible amendment. **Vice Chairman Bayer** seconded the motion.

DISCUSSION: **Senator Hill** expressed his support for the motion, with the understanding that an equitable solution will be reached that aligns with the original intent of the law.

Senator Rice recognized the distinct nature of hop crops. He commented the definition of harvesting needs to be clarified for all crops, not just hops, because the end of the harvesting process is the point in which tax may be applied. This will preclude the need to reexamine this section of Idaho Code in the future.

VOICE VOTE: The motion carried by **voice vote**.

H 675 **Relating to Taxation; Child Tax Credit.** **Senator Hill** presented **H 575**. **H 463** provided a \$130 tax credit per qualifying child. **H 675** proposes to increase the child tax credit from \$130 to \$205. **Senator Hill** provided specific examples of how the proposed increase would impact families based on income level and family structure (Attachment 1).

DISCUSSION: A discussion ensued regarding the tax savings examples provided. **Senator Vick** sought clarification of the net tax reduction in each scenario. **Senator Hill** provided examples of how this legislation will impact tax liability by income and family size and structure. He noted large families will see a net tax reduction, as compared to a tax increase under the provisions of **H 463**.

Senator Nye asked if a \$270 tax credit per child would offset the tax increase on large families. **Senator Hill** said that was a reasonable approximation, if differences in tax rates are not taken into account.

TESTIMONY: **Miguel Legarreta**, representing the Associated Taxpayers of Idaho (ATI), spoke in support of **H 675**. **Mr. Legarreta** provided data compiled by ATI regarding the impact this legislation will have on families. According to his analysis, families with three or more children will pay less in State income taxes than the prior tax year.

Senator Nye asked how a \$270 child tax credit would affect these projections. **Mr. Legarreta** replied \$287 per child would keep families whole, or fully offset the tax increase resulting from conformity to federal tax code.

ORIGINAL MOTION: **Senator Siddoway** moved to send **H 675** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

SUBSTITUTE MOTION: **Senator Nye** moved to send **H 675** to the **14th Order** for possible amendment. The motion failed due to lack of a second.

VOTE ON ORIGINAL MOTION: The motion carried by **voice vote**.

S 1220aaH **Committee Action on House Amendment.** **Chairman Johnson** explained the Committee will take action to concur or not concur with **S 1220aaH**.

TESTIMONY: **Krystal Hinkle**, representing the Idaho State Fire Commissioners' Association (ISFCA), spoke in opposition to **S 1220aaH**. **Ms. Hinkle** commented **S 1220aaH** would reduce the amount of money available to fire districts, as well as reduce access to personnel and resources through cooperative agreements between districts. These factors would ultimately limit the ability of fire districts to provide emergency services throughout the State.

Miguel Legarreta, representing the Associated Taxpayers of Idaho, stated there are 550 special taxing districts, excluding cities and counties, that receive sales tax revenue distribution; 57 are highway districts. Based on 2015 data, the total sales tax distributed to all local jurisdictions, including cities and counties, was approximately \$166.3 million.

DISCUSSION: **Vice Chairman Bayer** asked a representative from the Idaho State Tax Commission (Commission) to comment on **S 1220aaH**. **Ken Roberts**, Chairman of the Commission, stated the original intent of the legislation was to provide clear guidelines as to how sales tax revenues are distributed throughout the State.

Senator Siddoway asked Representative Moyle to explain the intent behind the House amendment. **Representative Moyle** stated the intention is not to harm taxing districts that receive sales tax revenues, but to keep sale tax distributions specific to the taxing district and the purpose for which it was created.

Senator Rice asked why the House amendment limits cooperative agreements. He noted rural firefighting efforts often cross fire district boundaries and require the sharing of resources across districts. **Representative Moyle** acknowledged these concerns and said fire districts can continue to operate this way, but not using sales tax revenues.

Vice Chairman Bayer asked Representative Moyle if he considered drafting separate legislation to address these issues. **Representative Moyle** said an effort was made to draft such legislation last year. He recognized the concerns raised during testimony, but he believed the amendment was vetted appropriately.

Senator Nye asked how the House amendment limits cooperative agreements between taxing districts. **Representative Moyle** stated sales tax distributions should be used for the purpose in which the taxing district was created; the language is inclusive in this regard. The language does not prevent districts from entering into cooperative agreements.

MOTION: **Senator Patrick** moved to not concur with **S 1220aaH**. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Johnson** adjourned the meeting at 2:07 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary