

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Thursday, March 04, 2021

TIME: 9:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Harris, Vice Chairman Addis, Representatives Moyle, Chaney, Gestrin, Dixon, Nichols, Kauffman, Adams, Cannon, Hartgen, Manwaring, Okuniewicz, von Ehlinger, Weber, Necochea, Ruchti

**ABSENT/
EXCUSED:** Representative(s) Chaney

GUESTS: Russell Westerberg, CCDC; David Cooper, Mike Lindstrom, Mathew Grow and Ken McClure, Idaho Society of Certified Public Accountants (ISCPA); Jason Kreizenbeck, Ball Ventures; David Lehman, Meridian Development Corporation (MDC); Seth Griegg, Idaho Association of Counties (IAC).

Chairman Harris called the meeting to order at 9:00 a.m.

RS 28676: **Rep. Doug Okuniewicz** said the Tax Cuts and Jobs Act of 2017 (TCJA) limited how much state and local income tax (SALT) could be deducted from earnings before calculating federal income tax owed. In 2020, the Internal Revenue Service (IRS) issued a revenue proclamation saying they would accept a full deduction of SALT paid by qualifying filers if the state in which they live has tax laws in place that allow SALT deductions to be paid and deducted as business expenses at the pass-through entity level, such as an LLC, S Corporation or partnership. This moves the TCJA standard deduction from an individual filer's personal income to their business filing level. Consistent with specific IRS guidance, **RS 28676** will allow owners, partners, members and qualified shareholders in partnerships, and LLCs to deduct all other SALT at the pass-through entity level rather than allowing the smaller TCJA deduction on their individual returns. It is revenue neutral to the State of Idaho, allowing only qualified Idaho business owners to deduct their SALT from their federal returns without reducing the tax they pay to the State of Idaho.

Responding to committee questions, **Rep. Okuniewicz** said **RS 28676** was drafted cooperatively by an Idaho State Tax Commission attorney and a Certified Public Accountant relying upon some model legislation from other states.

MOTION: **Rep. Manwaring** made a motion to introduce **RS 28676**. **Motion carried by voice vote.**

H 277: **Rep. Mike Moyle** said currently, only a taxpayer or their attorney are allowed to appear on appeal before the Idaho Board of Tax Appeals (IBTA). **H 277** adds a new section, Idaho Code §63-3810A, that allows a taxpayer to appear or be represented by another person of their choosing in hearings or rehearings of their appeal before the IBTA.

MOTION: **Rep. Dixon** made a motion to send **H 277** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Okuniewicz** will sponsor the bill on the floor.

H 276:

Rep. Clark Kauffman stated **H 276** remedies some unintended consequences of phantom income caused by passive activity when bonus depreciation is limited but then added back as income on the Idaho income tax return. **H 276** provides a simple solution that says Idaho income will be adjusted annually for the difference between the amount of the bonus depreciation that is actually deducted on the federal return and the amount computed using the standard depreciation schedule for Idaho purposes. Some recent audit results have indicated that Idaho requires an adjustment to income even though there was no benefit derived from the bonus depreciation at the federal level which is what causes the phantom income.

Rep. Kauffman introduced **Ken McClure**, ISCPA, who said Idaho de-coupled from bonus depreciation enacted at the federal level in 2002, resulting in not allowing this accelerated depreciation in Idaho that is allowed at the federal level. The excess of the bonus depreciation that can't be taken because Idaho did not conform to federal law is not allowed in Idaho so it gets added back into the taxpayer's basis and income even if they cannot take it at the federal level. There are limitations of what can be deducted in some circumstances at the federal level and even if a bonus depreciation can't be deducted, the basis has to be reduced by that amount. If an asset is sold, it has the effect of increasing the gain in an inappropriate way, as well as adding it to income.

David Cooper, Certified Public Accountant, presented the case of a partner in a project that was audited by the ISTC who proposed a tax on losses relating to his interest on the project. The tax return reported his business non-passive income and passive losses from the project. The passive loss for federal purposes was larger because of a bonus depreciation election that was made by the partnership. The passive loss on the state return was smaller, but in both cases the losses were passive and not deducted for either federal or state purposes. His tax return was prepared correctly. Mr. Cooper met with the ISTC auditor and told him the taxpayer received no reduction in federal taxable income, so the state taxable income and the federal taxable income was all the income, excluding 100% of any loss from the project, which is what it should be under Idaho law when conformed to the federal law. This is not real income, and there should be no tax upon it. There is no deduction for bonus depreciation claimed in Idaho's return. The tax collected is on phantom income that is never recovered, and it is unjust.

Answering committee questions, **Mr. Cooper** said he thinks the tax issue is raised and collected upon only at audit. **H 276** is not retroactive, but anyone with a pending tax case will have it resolved because the legislation recognizes the law has unintended consequences and is not being applied as intended.

Michael Lindstrum, CPA, and **Matthew Grow** CPA, spoke in support of **H 276** affirming it is a technical correction to a statute that de-coupled Idahoans from federal bonus depreciation and is a fair solution that should remedy the problem.

MOTION:

Rep. Hartgen made a motion to send **H 276** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kauffman** will sponsor the bill on the floor.

H 278:

Rep. Jim Addis stated **H 278** allows local taxing districts to withhold their increment from or have the ability to pass on their increment to an Urban Renewal District (URD) if they so choose. It does not impact any current URD or URD increment but only affects new URDs created or expanded after the legislation takes effect. It does not force a taxing district to withhold their increment. The collaboration required between the elected officials and their URD boards will lead to better URDs, URD policy and better policy for the taxpayer. **H 278** provides another tool to pay for new growth, allows developers to develop, but helps relieve existing taxpayers of the excess burden of paying for future new growth.

MOTION:

Rep. von Ehlinger made a motion to send **H 278** to the floor with a **DO PASS** recommendation.

Rep. Kauffman raised concerns about language on Page 2, Lines 37-39 of the legislation where it states the agreement entered into by the taxing district and urban renewal agency shall be submitted to the ISTC and the county clerk by the highway district when it should say taxing district.

In response to committee questions, **Rep. Addis** replied the decision to enter into an agreement between the taxing district and the URD can only be made at the time of the creation of the URD or upon extension of the termination date or size of a current URD. Good urban renewal will not be effected and bad urban renewal might be slowed down. Most urban renewal boards are not elected. The number of taxing districts involved would vary depending upon the size of the URD and could involve overlapping districts. The increment stays with the taxing district unless there is an agreement to pass it through to the URD.

Seth Grigg, IAC, indicated the IAC does not have an official position at this time. The advantage of **H 278** is that it requires more dialog between the URD and the respective taxing districts. In a situation where the projects are very targeted and spur major economic development, county commissioners would be supportive. Expansive urban renewal projects consuming considerable real estate without project definitions that impact revenue coming into the county would benefit from withholding increment. The legislation would help target how urban renewal is used and can have economic benefits.

David Lehman, MDC, spoke **in opposition** to **H 278** saying the plain reading of the legislation would place the responsibility on the highway districts, rather than the taxing districts, to submit an agreement to the counties and ISTC, which would give veto power to the highway districts who choose not to submit the agreement. Mr. Lehman said he had policy concerns where some counties want to enter into an agreement for URD projects while some do not. Upon completion of the URD project when the new economic development and infrastructure goes onto the tax roles as new construction, will the entity who did not participate in the funding of the project still be a beneficiary of the increased property values when collecting taxes on that property? This creates an unfair advantage and a disincentive to taxing districts to join in an agreement.

Responding to committee comments and questions, **Mr. Lehman** said **H 278** needs to correct the technical problem of who is responsible for reporting the agreement to the county and ISTC and needs a prohibition on taxing districts who don't enter into an agreement from collecting the increased revenue resulting from the new construction and higher value of the properties. If the concern is limiting liability to property taxpayers, then eliminating the ability of those districts that did not participated in the URD from collecting the increased property taxes based on the new value of the property is tax relief. All taxing districts are sent notice when a URD is planned, although usually no one shows up. He indicated he would provide the committee with a list of URDs that will end in five years.

Brent Tolman, President, Development Association of Idaho, and **Mark Mitten**, Executive Director, Burley Development Authority, spoke **in opposition** to **H 278** stating there are serious questions regarding the reporting process, and there is no language that the agreements entered into are for the long-term life of the plan which can encumber city councils with long-term debt. URDs create jobs from which the state receives sale and income taxes.

In response to committee questions, **Mr. Tolman** responded that current legislation enables URDs to issue bonds for certain projects involving public improvements. Some urban renewal boards are made up of elected officials and some are appointments by elected officials.

Rep. Addis closed by stating **H 278** needs some correction. He doesn't think taxing districts would be entitled to profit from agreements they did not enter, but it would be an easy correction to make. Taxing districts who cannot afford the services required by new growth because it is spent on urban renewal is the major reason for the legislation.

Reps. Cannon and Adams spoke in support of **H 278** because existing property owners are bearing responsibility for growth, and this will lower their taxes. It brings more people to the table and it is good to have more eyes on urban renewal projects.

SUBSTITUTE MOTION:

Rep. Gestrin made a substitute motion to send **H 278** to General Orders.

AMENDED SUBSTITUTE MOTION:

Rep. Manwaring made an amended substitute motion to **HOLD H 278** in committee.

Reps. Manwaring and Ruchti spoke in support of the amended substitute motion.

Rep. Moyle spoke in support of the substitute motion.

ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION:

Roll call vote was requested. **Amended substitute motion failed by a vote of 4 AYE, 9 NAY and 4 Absent/Excused. Voting in favor** of the amended substitute motion: **Reps. Manwaring, Weber, Necochea and Ruchti. Voting in opposition** to the amended substitute motion: **Chairman Harris, Vice Chairman Addis, and Reps. Moyle, Gestrin, Kauffman, Adams, Cannon, Okuniewicz and von Ehlinger. Reps. Chaney, Dixon, Nichols and Hartgen were absent/excused.**

VOTE ON SUBSTITUTE MOTION:

Motion carried by voice vote. Rep. Addis will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 10:24 a.m.

Representative Harris
Chair

Lorrie Byerly
Secretary