

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Tuesday, February 21, 2012

TIME: 9:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Lake, Vice Chairman Collins, Representative(s) Barrett, Moyle, Raybould, Roberts, Schaefer, Smith(24), Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth, Gibbs, Killen, Burgoyne, Rusche

**ABSENT/
EXCUSED:** None.

GUESTS: Roger Batt, Idaho Grape & Wine Producers; Melissa Nelson, Idaho Society of CPAs (ISCPA); Phil Homer, Idaho Association of School Administrators (IASA); Bob Aldridge, Trust & Estate Professionals of Idaho (TEPI); Ben Davenport and Max Greenlee, Risch Pisca; Jesse Taylor, Westerberg & Associates; Pam Eaton, Idaho Retailers Association; Dave Goins, Idaho News Service; Colby Cameron, Northwest Grocery Association

Chairman Lake called the meeting to order at 9:02 am.

MOTION: **Rep. Raybould** made a motion to approve the minutes of the February 15, 2012 meeting. **Motion carried by voice vote.**

RS 21278: **Rep. Nessel** continued with his February 21, 2012 testimony on **RS 21278** which discusses streamlined sales tax. In response to previous committee questions, Rep. Nessel said that there were no expected privacy issues. Colorado is a home rule state, and they have had no issues with the certified service providers. Discounts are addressed on page 10 of the proposed legislation. Momentum is building in Congress on this issue. Passage of legislation on a federal level is still unknown. He reiterated that this proposed legislation does not instruct what to tax or not tax, but makes available the correct categories if a state does choose to tax something. In Idaho, 29 services are actually taxable. He said that pages 5-30 of this proposed legislation are definitions. A key definition includes Certified Automated Systems which are the organizations that are approved to collect the taxes.

In response to Committee questions, **Dan John**, State Tax Commission, stated that the language is in place that allows for exemption of personal property from property tax and it would not be affected by the RS. The lease of personal property is subject to tax, but only sales tax. The systems are qualified to calculate the tax.

Rep. Nessel stated that the Agreement does not preempt state law. It provides relief of a certain liability. If the State is at fault, the systems and providers are not liable. The local option tax can only have one rate per locality. There is a general exemption for utilities, and the Agreement specifically states electricity, water, and gas. Rep. Nessel will confirm that steam is included as a utility. He stated that this proposed legislation is to ensure the State complies if it enters into this Agreement. There is language within the proposed legislation to ensure that only certified service providers are used. Non-nexus providers cannot be required to collect taxes. It also outlines the Idaho representatives and the governing board. It is important to take the time to get this Agreement in place, so that it will be in effect July 1, 2013. All the details will be in place prior to the effective date.

In response to Committee questions, **Rep. Nasset** said that the \$35M uncollected taxes were derived from studies done at the University of Tennessee. The studies were done by state and calculated, using different scenarios, how much the states are actually losing. The high end calculation is a \$90-100M loss. The loss on internet sales is at least \$30M to the State. The proposed legislation is not just for the internet, so \$35M is a reasonable estimate of what could be collected. Currently, companies outside of Idaho collect under a voluntary system. There is no change for Idaho-based companies who sell to Idaho customers. There are no changes for an Idaho-based company that is now selling to customers out of state. The impact is on companies in other states. Whether Idaho participates or not, Idaho-based businesses will continue as they do now.

In response to Committee questions, **Rep. Nasset** stated there is currently a large amount of avoidance of this tax. The avoidance isn't just by individuals, but also by businesses. The validity of the University of Tennessee study has not been questioned. It has been accepted by the many people who have looked at it. He stated that, currently, many items purchased should have a Use Tax paid for them. There are companies that are voluntarily collecting the tax and remitting it to the states that belong to the Streamlined Sales Tax Agreement. The states already participating in the Agreement have certified software, rates, boundaries and know what is taxable/exempt. This simplifies sales and collections for the states. He noted that if an item is listed as exempt, and it shouldn't be, both the person and the provider are held harmless for that error. The software would know if local option taxes should be included. The software also goes to each definition to verify if an item is taxed. The Agreement specifies that a state can tax anything they choose; the state determines the items. Some states exempt different levels of foods, so specific definitions were designed.

In response to Committee questions, **Rep. Nasset** said the proposed legislation follows the current law of freight. That is, freight in to a retailer has no sales tax assigned to it. Freight out to a purchaser requires collection of sales tax. The Agreement also has provisions for having taxable and non-taxable items in the same shipment. Purchases in our state have no change unless Congress expands the NEXUS standard. The Agreement does not do away with our use-based exemption. A universal exemption certificate will be issued to all holders of many different types of exemption certificates.

In response to Committee questions, **Rep. Nasset** said that the Tax Commission only audits a small percentage of companies. Auditing is done for both sales and use taxes. Private citizens don't get randomly audited for non-payment of use tax. In most cases, other citizens contact the Tax Commission with information and the Tax Commission follows up. An example of why an audit would occur is someone driving a brand new vehicle with Oregon plates. They follow up on big ticket items. The Agreement allows for the choice of collection method and simplifies collecting what is already owed to the State.

MOTION: **Rep. Smith** made a motion to introduce **RS 21278**.

SUBSTITUTE MOTION: **Rep. Barrett** made a substitute motion to return **RS 21278** to the sponsor.

Further discussion included a need to educate consumers that if they don't pay, the government will get involved. Streamlined sales tax is not a simple thing. The RS helps the local retailers. This Agreement doesn't grow government; there is no additional hiring of any State employees, but it might require the hiring of more auditors. It helps the brick and mortar stores. The business community should testify on this proposed legislation.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Rep. Barrett requested a roll call vote on the substitute motion to return **RS 21278** to the sponsor. **Substitute Motion failed by a vote of 7 AYE and 11 NAY. Voting in favor** of the motion: **Reps. Barrett, Moyle, Schaefer, Wood(35), Harwood, Barbieri, Bayer. Voting in opposition** to the motion: **Reps. Lake, Collins, Raybould, Roberts, Smith(24), Bedke, Killen, Burgoyne, Rusche, Ellsworth, Gibbs.**

**ROLL CALL
VOTE ON
ORIGINAL
MOTION:**

Roll call vote was requested on the original motion, to introduce **RS 21278. Motion carried by a vote of 12 AYE and 6 NAY. Voting in favor** of the motion: **Reps. Lake, Collins, Moyle, Raybould, Roberts, Smith(24), Bedke, Killen, Burgoyne, Rusche, Ellsworth, Gibbs. Voting in opposition** to the motion: **Reps. Barrett, Schaefer, Wood(35), Harwood, Barbieri, Bayer.**

RS 21195:

Rep. Roberts presented **RS 21195** to the Committee. As was discussed last year, Urban Renewal Districts require a two-thirds majority approval for bond indebtedness. The proposed legislation addresses two sections instead of 50; Section 1, which deals with the powers of an Urban Renewal District and Section 2, which deals with the issuance of bonds. The proposed legislation attempts to make dealings with Urban Renewal Agencies consistent in tax policy and limits a county's ability for bond indebtedness.

In response to Committee questions, **Rep. Roberts** said that tax increment financing affects all county members.

MOTION:

Rep. Wood(35) made a motion to introduce **RS 21195. Motion carried by voice vote. Reps. Smith(24)** and **Burgoyne** asked to be recorded as voting **NAY.**

RS 21282:

Bob Aldridge, on behalf of TEPI, presented **RS 21282.** The proposed legislation addresses pass-through entities. If a small entity in Idaho (i.e. an LLC), has pass-through income to the owners or heirs, then election on who pays the tax by the individual or the heir is required. There is no way to know the taxable income for the year. This proposed legislation makes it easier and the election is now limited to owners and heirs of the pass-thru entities. It allows for a composite return. If an owner/heir does not file a composite return, then withholding will be collected. It provides that the burden is to be on the entity. A composite return can be filed or a statement of income can be given to the non-resident. Backup withholding is eliminated in the election language. There can be work done in rules for simplification purposes.

MOTION:

Rep. Killen made a motion to introduce **RS 21282. Motion carried by voice vote.**

H 489:

Roger Batt, Idaho Grape Growers and Wine Producers, presented **H 489.** The purpose of this legislation is to exempt tastings of beverages including, but not limited to, wine and beer from the payment of Use Taxes. Also included is the definition of a free tasting. This is a tax on losses; something given away. It has an emergency clause so that this burden is eliminated earlier than July 1, 2012.

MOTION:

Rep. Ellsworth made a motion to send **H 489** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Bayer** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 10:23 am.

Representative Lake
Chair

Janet Failing
Secretary