

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Wednesday, February 29, 2012

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Corder, Vice Chairman Johnson, Senators Hill, McKenzie, Hammond, Siddoway, Werk, and Bilyeu

**ABSENT/  
EXCUSED:**

**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.

**Chairman Corder** called the meeting to order at 3:05 pm. **Chairman Corder** announced there have been additions to the books supplied by Dan John of the State Tax Commission.

**H 489**

To Provide the Use Tax Shall Not Apply to Certain Free Tastings of Beverage.  
**Chairman Corder** introduced **Roger Batt**, of the Idaho Grape Growers and Wine Producers. See attachment #1.

**Senator Hill** asked why beverage tastings are part of this bill, but not other food products. **Mr. Batt** said when the bill was first created, free samples of food were included; however the Tax Commission would prefer to regulate the food samples. **Chairman Corder** introduced Dan John of the State Tax Commission. **Mr. John** said when the bill was brought to the Tax Commission, the only industry that had been discussed was the wine industry. It would have a significant fiscal impact to eliminate the use tax on food as compared to beverages.

**Senator Hill** asked if the people providing the free drinks charged below market price, what would happen in relation to sales tax. **Mr. John** said the sales tax is based upon the amount charged, unless it is deemed the charge is to circumvent the sales tax. **Senator Hill** asked if a retailer charged less than his cost, would that trigger a review. **Mr. John** said no. If a product is "buy one, get one free", the sales tax is on the total purchase price, rather than the listed price. **Senator Hill** said there is no reason to charge use tax on free samples when they are used to increase sales and sales tax is charged on the sales. **Mr. John** said when someone gives away something for nothing, they are considered the consumer and the tax involved would be a use tax on the value of a good, not a sales tax. When a retailer goes out and buys something to give away, that is subject to either the sales tax or use tax.

**Vice Chairman Johnson** asked if a winery opens a box of wine for a tasting, is it written off as a business expense. **Mr. John** said if the wine was produced there, it was probably already written off. If it was purchased for resale, it could be written off.

**Senator Werk** asked if a customer pays for a tasting, how does that impact the initial charge for the tasting. **Mr. John** said if someone goes to a winery and pays a charge for tasting, the charge is subject to sales tax. **Senator Werk** asked if a large can of a beverage was given away as a sample, would that have to be consumed in the store. **Mr. Batt** said there is no definition of the size of the tasting in the bill. A tasting is defined as a beverage provided to a potential customer at no charge. The wine industry tasting size is about one ounce. **Mr. Batt** said the sample, no matter the size, would need to be consumed on the premises.

**Senator Bilyeu** asked if there is a tax on advertising. **Mr. John** said the service of advertising does not have a tax; but if you are purchasing an item for advertising purposes, there is a sales tax. This is not considered advertising because there is a consumption of tangible personal property which is subject to a sales or use tax. This is a product rather than a service.

**Senator Hill** said a customer can get a free Krispy Kreme doughnut with any purchase. What would the sales tax be charged on, the one that was purchased or the cost of both. **Mr. John** said the sales tax would be paid on the purchase price; no matter how many doughnuts were included. **Senator Hill** said Krispy Kreme used to give away a free doughnut without any purchase. Would the free doughnut have had a use tax attached. **Mr. John** said anything that is given away would be subject to the use tax.

**Senator Hammond** said wine tasting is for education and to test the flavor, the consuming of alcohol is not a goal. The tax should be on the purchase of the product, not on the sips.

**Chairman Corder** introduced **Colby Cameron** of Sullivan, Reberger and Eiguren representing the Northwest Grocery Association who spoke in support of the bill.

**Chairman Corder** introduced **Pam Eaton**, Chairman of the Idaho Lodging and Restaurants Association, who spoke in support. **Ms. Eaton** said they would also like to see a bill exempting food tastings as well.

**MOTION:** **Senator Hammond** made a motion to send H 489 to the floor with a Do Pass. **Senator Hill** seconded, and the motion carried by Voice Vote. **Senator Siddoway** will be the floor sponsor.

**H 517** Relating to Adjustments to Idaho Taxable Income, to Remove Language Disallowing Deduction of Certain Expenses of Elementary and Secondary School Teachers. **Chairman Corder** introduced **Senator Brackett**. **Senator Brackett** said this legislation allows the state to conform to the federal tax code for calculating adjusted gross income with regards to certain exemptions for elementary and secondary school teachers. The emergency clause means the legislation will be effective for the 2012 tax year. This is a fair and commonsense adjustment.

**Senator Werk** said he appreciated the work that has been done regarding this issue and is happy to have the opportunity to vote on this bill.

**Chairman Corder** introduced **Bert Marley**, Director of Public Policy for the Idaho Education Association, who spoke in support. **Mr. Marley** said studies show that more and more teachers are spending their own money to supply the classroom; 97% of teachers surveyed spent an average of \$477 per year for classroom supplies. The federal tax deduction that is being conformed with expired at the federal level in 2011 and there is work being done to urge Congress to extend the educator tax deduction.

**MOTION:** **Senator Werk** made a motion to send H 517 to the floor with a Do Pass. **Senator Hill** seconded, and the motion carried by Voice Vote. **Senator Brackett** will be the floor sponsor.

**S 1357** **Chairman Corder** introduced **Suzy Budge**, representing John Deere. **Chairman Corder** said this bill replaces S 1315. **Ms. Budge** said this is related to personal property tax and where a Purchase Money Security Interest stands when it comes to tax delinquencies. There is a difficulty with how counties assess for personal property; all personal property items are considered all one item. There is an amendment being worked for this legislation so any personal property under the PMSI can be separate from the rest of the personal property.

**Chairman Corder** introduced **Tony Poinelli**, Idaho Association of Counties. **Mr. Poinelli** said the way the personal property tax is done, if an individual owner owns multiple pieces of equipment, they are lumped together as one parcel. If any part of those items become delinquent, the lien is applied to the entire parcel. There are sections of Idaho code that need to be modified and amended to allow for segregation of individual pieces of property.

**Senator Bilyeu** asked if segregation is not allowed, or is not the current practice. **Mr. Poinelli** said it is both. The law does not clearly allow for segregation to occur and it is not practice.

**Senator Siddoway** asked why other sections would need to be amended when the Legislature passes a law that would make them obsolete. **Mr. Poinelli** said there is a process that needs to occur and the other statutes deal with the process.

**Chairman Corder** introduced **Roy Eiguren**, representing Caterpillar, who spoke in support.

**Chairman Corder** introduced **Roger Batt**, representing the Pacific Northwest Hardware and Implement Association, who spoke in support.

**Senator Werk** said he would prefer to see any amendments before the bill is sent to the amending order. **Chairman Corder** assured the committee they would see any amendments before the bill is amended.

**MOTION:**

**Senator Werk** made a motion to send S 1357 to the 14th Order. **Senator Siddoway** seconded, and the motion carried by Voice Vote.

**Chairman Corder** adjourned the meeting at 3:45 pm.

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Senator Corder  
Chairman

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Jo Ann Bujarski  
Secretary