

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Wednesday, February 20, 2013  
**TIME:** 9:00 A.M.  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Collins, Vice Chairman Wood (Hall)(35), Representatives Barrett, Moyle, Raybould, Denney, Anderson(31), Anderst, Dayley, Hartgen, Kauffman, Patterson, Trujillo, Burgoyne, Erpelding, Meline  
**ABSENT/  
EXCUSED:** None.  
**GUESTS:** Mike Chakarun, Randy Tilley, Idaho State Tax Commission; Benjamin Davenport, Associated Taxpayers of Idaho; Jonathan Parker, Holland & Hart; N.L. Clayville, DFM.

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

**MOTION:** **Rep. Kauffman** made a motion to approve the minutes of February 18, 2013.  
**Motion carried by voice vote.**

**H 139:** **Jonathan Parker**, Holland & Hart, representing Eide Bailey, introduced **Steve Young**, Tax Attorney, Holland & Hart. Mr. Young presented **H 139**, which is a joint legislation effort between Eide Bailey, **Sen. Brent Hill**, with support of the Idaho Association of CPA's. This legislation limits the amount of compensation paid to a partner by a partnership, doing business in Idaho, that can be attributed to the state in which the partner performed the service, to a \$250,000 cap. Any amount paid in excess of \$250,000 would be sourced to Idaho, based on the apportionment factor, and adjusted each year for inflation.

This legislation also clarifies that all compensation paid to a retired partner is sourced to the partner's state of domicile. **Mr. Young** illustrated the potential for partners providing service outside Idaho, to be compensated in one of the surrounding states to avoid paying Idaho income tax. Washington, Nevada, and Wyoming do not have state income tax.

**Mr. Young** stated his perception is the \$250,000 cap would be close to neutral and does not believe it is feasible to get certainty and fairness for taxpayers, as well as getting close to zero fiscal impact. Mr. Young responded to a question stating there had been prior legal and audit cases where guaranteed payments were taxed as distributed income. This legislation makes clear that guaranteed payments are sourced as salary.

**Randy Tilley**, Audit and Collections Administrator, Idaho State Tax Commission. Mr. Tilley did not testify for or against this legislation, but wanted to clarify some of the questions raised at the original hearing. The estimated fiscal impact of guaranteed payments would be approximately \$750,000. The current statute under discussion has been in effect since 2000. In both 2005 and 2007 there were changes related to investment partnerships and how they are treated for tax purposes. Guaranteed payments are treated as distributable income and clarification of the rule is needed.

A review of 2008 tax returns found that 60% of taxpayers were in compliance with how the Idaho State Tax Commission interpreted the statute. However, there were also 40% of taxpayers in noncompliance. **Mr. Tilley** stated the more clarity there is in a statute, the less potential there is for litigation.

In response to a question on the definition of abusive tax practice, **Mr. Tilley** stated that it is often difficult to determine. Since 2008 the Idaho State Tax Commission has had an audit discovery module which allows information in the Idaho tax system to be compared to other sources of tax data, such as the Internal Revenue Service, to determine if a taxpayer is treating income differently for different purposes. Mr. Tilley stated that they had also looked at 29 other states to determine how guaranteed payments are treated. 62% treat guaranteed payments as a distributed share. Seven states do not tax at all and four states use a mixed method.

**Mr. Young** closed by stating the goal is to arrive at legislation that is clear, fair, and that works. He expressed his appreciation that the Idaho State Tax Commission worked with Holland & Hart on this legislation. Mr. Young reiterated if non compliance is at 40% there is not clarity on the issue. In response to a question, Mr. Young stated he believes Oregon is the only state with a law allowing guaranteed payments to be treated as a distributed share. All other states treat guaranteed payments as salary.

**MOTION:** **Rep. Erpelding** made a motion to send **H 139** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Erpelding** will sponsor the bill on the floor.

**RS 22008:** **Rep. Moyle** presented **RS 22008** which will allow a property owner within a city limit that borders two fire protection districts, to de-annex from a fire protection district and annex into a different district or fire department, with proper notification. There are areas where fire districts are contiguous and in some cases, the property owner can opt out of one and be included in another.

In response to a question regarding public policy with options, Rep. Moyle stated that most fire districts and departments have Joint Powers Agreements in place as well as providing mutual aid. A bigger concern is potential for lost revenue to fire districts if a land owner opts out, in favor of another fire district.

**MOTION:** **Rep. Barret** made a motion to introduce **RS 22008.** **Motion carried by voice vote.**

**RS 22026:** **Rep. Moyle** presented **RS 22026** which specifies the provisions on de-annexation of property within a fire protection district. Currently it is possible to move between fire protection districts, but there is not a process to de-annex. This proposed legislation has two mechanisms for de-annexation, with board approval; petition to be de-annexed or a more lengthy process that involves a hearing. This proposed legislation does address the issue of long-term indebtedness if a property is de-annexed, so that remaining property owners within the fire district do not have to assume a greater share of any long-term debt obligation. Rep. Moyle stated he does not believe there is currently a mechanism for a fire district board to remove property.

**MOTION:** **Rep. Barrett** made a motion to introduce **RS 22026.** **Motion carried by voice vote.** **Rep. Meline** requested to be recorded as voting **NAY.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 9:45 a.m.

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Representative Collins  
Chair

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Kathleen A. Simko  
Secretary