

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Thursday, March 07, 2013

**TIME:** 8:30 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Collins, Vice Chairman Wood(35), Representatives Barrett, Moyle, Raybould, Denney, Anderson(31), Anderst, Dayley, Hartgen, Kauffman, Patterson, Trujillo, Burgoyne, Erpelding, Meline

**ABSENT/  
EXCUSED:** None.

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Collins** called the meeting to order at 8:32 a.m.

**MOTION:** **Rep. Trujillo** made a motion to approve the minutes of March 5, 2013. **Motion carried by voice vote.**

**MOTION:** **Rep. Burgoyne** made a motion to approve the minutes of March 6, 2013. **Motion carried by voice vote.**

**RS 22172:** **Roger Batt**, Idaho Heartland Coalition, presented **RS 22172** which would update water quality statutes and authorize the Idaho Department of Environmental Quality (IDEQ) to designate, revise and assess the status of beneficial uses for Idaho water bodies. Mr. Batt stated that **RS 22172** was developed in partnership with the IDEQ.

**MOTION:** **Rep. Moyle** made a motion to introduce **RS 22172** and refer to the Environment, Energy and Technology Committee. **Motion carried by voice vote.**

**RS 22201C1:** **Seth Grigg**, Idaho Association of Counties, Association of Cities, Idaho Association of School Administrators and the Idaho School Board Association presented **RS 22201C1**. This proposed legislation is related to business personal property taxation and would create three changes to the exemption currently granted under **Idaho Code 63-602KK**. A new \$1,500 exemption on tangible personal property purchased on or after January 1, 2013 would be put in place. The 'trigger' of \$100,000 exemption granted by **H 599aa** would begin and a uniform application process, which would simplify reporting, would be developed by the Idaho State Tax Commission (ISTC). The estimates of revenue shortfall is between \$18-19 million. For taxpayers with a personal property value of \$100,000 or less, the Idaho State Tax Commission would use an affidavit annually so the individual would not need to apply every year.

**MOTION:** **Rep. Wood(35)** made a motion to introduce **RS 22201C1**.

**Mr. Grigg** clarified that the initial application would indicate the value of the inventory and if \$100,000 or less, the taxpayer would then complete an affidavit annually. Mr. Grigg clarified that the de minimus amount of \$1,500 is a per item amount. Mr. Grigg acknowledged that among parties drafting this proposed legislation, they were not able to reach consensus on a full repeal. The portion of personal property tax going to local governments has increased, at least in part, due to the change in real property value in the recent years. In response to a question on how the estimated fiscal impact was determined, Mr. Grigg stated that the ISTC provided data and based on prior years, the projection is between \$18-\$19 million.

**VOTE ON THE MOTION:**

**Chairman Collins** called for a vote on the motion to introduce **RS 22201C1**.  
**Motion carried by voice vote.**

**H 243:**

**Jay Larsen**, Idaho Technology Council, presented **H 243** which would clarify the definition of cloud computing software for purposes of sales and use taxation. The Idaho Technology Council is comprised of numerous companies and who employ approximately 40,000 Idahoans. Mr. Larsen stated this legislation was developed with the involvement of the technology industry, Idaho State Tax Commission (ISTC) and Idaho Department of Commerce (Commerce). In Idaho, sales tax is not collected on services. Cloud computing provides a service and this legislation takes the ambiguity out of the definition.

**Tab Roper**, Vice President of TW Telecom, testified in **support of H 243**. TW Telecom is a company that builds fibre optic networks throughout the country, utilizing cloud technology. Mr. Roper works with many clients who depend on cloud computing to conduct business. Within the health care industry, many providers are using cloud computing to comply with HIPPA laws. These clients are not purchasing a tangible product, but a service. Mr. Roper believes that technology businesses wanting to locate in Idaho would be deterred if this bill does not pass.

**Mike Boren**, Chief Operating Officer and Board Chair of Clearwater Analytics, testified in **support of H 243**. Clearwater Analytics was founded in 2004 and currently has 230 employees and offices in Boise, New York City and Scotland, Tech businesses are valuable to Idaho. They typically have a low footprint and bring many benefits to the community. Mr. Boren stated Idaho should support the tech industry but the current structure of taxation is detrimental. At its core, Clearwater Analytics provides accounting, which is a service. Mr. Boren stated his company is at a disadvantage by being located in Idaho, since the ISTC views and taxes cloud technology as a product. Clearwater Analytics has gone from a payroll of \$0 in 2004, to more than \$20 million today. Tech businesses are not tethered by physical infrastructure and typically are very mobile. If Idaho wants to keep the tech industry here and growing, a change in the current tax structure is needed.

**Chris Chattin**, Metcamps testified in **support of H 243**. Metcamps is a company that provides online registration for camps. Previously, the process for children going to camp was a paper intensive process. Metcamps serves as a facilitator for the transaction and eliminates burdensome paperwork. Mr. Chattin stated Idaho is a great place to live and work. His company is one year old and cloud computing allows new businesses to be developed in a place with quality lifestyle and friendly business climate. There is strong potential for Idaho to become a leader in the software service industry. Taxing cloud computing as a product would significantly effect the opportunity to attract and retain businesses.

**Caroline Merritt**, Boise Metro Chamber of Commerce, testified in **support of H 243**. The Boise Metro Chamber represents more than 1,800 members, many with a vested interest in this issue. Many businesses are making the transition to cloud services and the benefits include lower cost and the capacity is continually being updated and improved. The cloud computing service is not owned by the business yet a tax would be paid on an ongoing basis.

**Rick Smith**, Partner with Hawley Troxell, spoke on the legal aspects of **H 243**. The Idaho Sales Tax Act was enacted in 1965. There are two key components that apply primarily to the sale of tangible property; use or delivery of that property, and operational control. In 1986 the definition of tangible property was amended to include certain types of software. This legislation is an attempt to clarify tangible personal property and that cloud computing is a service and should not be taxed. Mr. Smith stated cloud computing is comparable to a subscription that is controlled by the seller. The current law is vague and broad.

**Mr. Smith** stated a previous draft of legislation was discussed with ISTC and the two primary areas of concern have been resolved in **H 243**. Those areas of concern were the taxation of entertainment uses via technology and whether software accessed remotely, which can also be purchased in disc form and is subject to tax, should be taxed. The one issue not agreed upon was whether the clarification should be included in the definition section or whether cloud computing should be specifically exempted. Mr. Smith stated philosophically, it is not an exemption but a clarification of the definition and **H 243** is reflective of that position.

**Mr. Smith** stated some states, including Kansas, California, Nevada, Vermont, Illinois, Wisconsin and Iowa do not tax remotely accessed software. Other states including Utah and Washington, do tax remotely accessed software. It is a state's decision on how they define computer software. Mr. Smith clarified that off the shelf software or downloaded software would still be taxable and custom designed software is not taxable.

In response to a question, **Mr. Smith** stated for businesses who have already been audited by ISTC and required to pay taxes on remotely accessed software, there may be recourse for them to recover those payments. Mr. Smith stated the ISTC has been acting in good faith but that statutes are ambiguous. In response to a question on whether there is a legal risk in **H 243**, by the exclusion of entertainment, and whether there will be future controversy, Mr. Smith explained that as technology evolves, the legislature will likely have to address the statute again in the future.

**Jeff Sayer**, Director, Idaho Department of Commerce, **supports H 243**. Mr. Sayer stated technology is a market anticipated to grow for decades. Idaho and Boise have an opportunity to take a lead position and **H 243** sends a message and creates an environment that is business friendly. Technology businesses are generally the hardest to attract and the easiest to lose.

**Jody Sedrick**, CEO of Zemware, which offers cloud based services, stated 95% of his business is outside of Idaho. The company has grown from four to 16 employees over the past six years. Mr. Sedrick clarified the difference between software that is CD based and cloud software, as the installation of the software from the CD is permanently on the computer. Cloud computing is different in that it can be accessed remotely by logging on to numerous devices. Mr. Sedrick **supports H 243**.

**Rich Stuppy**, Vice President of ITC & Kount, Inc. and Chair of the Idaho Tech Council testified in **support of H 243**. ITC & Kount, Inc. utilizes cloud computing to provide internet fraud and accounting services. Mr. Stuppy stated his company provides a service. **H 243** distinguishes cloud computing as a service, does not create an inequity, and is consistent with current Idaho tax policy.

**Matt Rissell**, CEO of TSheets.com; **Tim Ramey**, and **Natalie Shores**, Whitecloud Analytics; **Roger Hancock**, Recall Infolink; and **Aaron Stanton**, Booklamp, all testified in **support of H 243**.

**MOTION:**

**Rep. Denney** made a motion to send **H 243** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**Mr. Larson** responded to a question stating entertainment has always been a separate section of the tax code and he does not believe this legislation creates an inequity.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 9:57 a.m.

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Representative Collins  
Chair

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Kathleen A. Simko  
Secretary